रजिस्ट्री सं॰ डी॰ एल॰—(एन)04/0007/2006—08 REGISTERED NO. DL—(N)04/0007/2006—08

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II — खण्ड 2
PART II — Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं॰ 30] नई दिल्ली, सोमवार, मई 22, 2006 / ज्येष्ठ 1, 1928
No. 30] NEW DELHI, MONDAY, MAY 22, 2006 / JYAISTHA 1, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 22nd May, 2006:—

BILL NO. 45 OF 2006

A Bill further to amend the State Bank of Saurashtra Act, 1950, *the State Bank of Hyderabad Act,* 1956 *and the State Bank of India (Subsidiary Banks) Act,* 1959.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

PART I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the State Bank of India (Subsidiary Banks Laws) Amendment, Act, 2006.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE STATE BANK OF SAURASHTRA ACT, 1950

Substitution of new section for section 5.

2. For section 5 of the State Bank of Saurashtra Act, 1950 (hereafter in this Chapter referred to as the State Bank of Saurashtra Act), the following section shall be substituted, namely:—

Authorised capital.

"5. (*1*) Subject to the provisions of this Act, the authorised capital of the Saurashtra Bank shall be rupees five hundred crores.

(*2*) The authorised capital of the Saurashtra Bank shall be divided into shares of one hundred rupees each or of such denomination as the Saurashtra Bank may, with the approval of the State Bank, decide.

(*3*) The Saurashtra Bank may issue the certificates of shares of equivalent values of such denomination as the Saurashtra Bank may decide with the approval of the State Bank, in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959 and every shareholder of the Saurashtra Bank shall be entitled to have the certificate of shares of equivalent value of such denomination. 38 of 1959.

(*4*) Notwithstanding anything contained in sub-section (*1*), the State Bank may, with the approval of the Reserve Bank, authorise the Saurashtra Bank to increase or reduce its authorised capital.".

Amendment of section 6.

3. In section 6 of the State Bank of Saurashtra Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), the issued capital of the Saurashtra Bank, shall consist of such amount as the State Bank may, with the approval of the Reserve Bank, fix, and, shall be divided into fully paid-up shares of such denomination in accordance with sub-section (*2*) of section 5.";

(*b*) for sub-section (*3*), the following sub-sections shall be substituted, namely:—

"(*3*) The Saurashtra Bank may, from time to time, with the approval of the State Bank and the Reserve Bank, increase, whether by public issue or by preferential allotment or private placement in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959, its issued capital by issue of equity or preference shares. 38 of 1959.

(*3A*) The issued capital of the Saurashtra Bank shall consist of equity shares or equity and preference shares:

Provided that the issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable) and the terms and conditions subject to which, each class of preference shares may be issued.

(*3B*) The Saurashtra Bank may, with the approval of the State Bank and the Reserve Bank, increase from time to time by way of issuing bonus shares to existing equity shareholders, its issued capital in such manner as the State Bank, with the approval of the Reserve Bank, direct.

(*3C*) No increase or reduction in the issued capital of the Saurashtra Bank shall be made in such a manner that the State Bank holds at any time less than fifty-one per cent. of the issued capital consisting of equity shares of the Saurashtra Bank.

(*3D*) The Saurashtra Bank may accept the money in respect of shares issued towards increase in issued capital in instalments, make calls and forfeit unpaid shares and re-issue them, in the manner as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.". 38 of 1959.

CHAPTER III

AMENDMENTS TO THE STATE BANK OF HYDERABAD ACT, 1956

79 of 1956. Substitution of new section for section 9.

4. For section 9 of the State Bank of Hyderabad Act, 1956 (hereafter in this Chapter referred to as the State Bank of Hyderabad Act), the following section shall be substituted, namely:—

Authorised capital.

"9. (*1*) Subject to the provisions of this Act, the authorised capital of the Hyderabad Bank shall be rupees five hundred crores.

(*2*) The authorised capital of the Hyderabad Bank shall be divided into shares of one hundred rupees each or of such denomination as the Hyderabad Bank may, with the approval of the State Bank, decide.

(*3*) The Hyderabad Bank may issue the certificates of shares of equivalent values of such denomination as the Hyderabad Bank may decide with the approval of the State Bank, in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959 and every shareholder of the Hyderabad Bank shall be entitled to have the certificate of shares of equivalent value of such denomination. 38 of 1959.

(*4*) Notwithstanding anything contained in sub-section (*1*), the State Bank may, with the approval of the Reserve Bank, authorise the Hyderabad Bank to increase or reduce its authorised capital.".

Amendment of section 10.

5. In section 10 of the State Bank of Hyderabad Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), the issued capital of the Hyderabad Bank, shall consist of such amount as the State Bank may, with the approval of the Reserve Bank, fix, and shall be divided into fully paid-up shares of such denomination in accordance with sub-section (*2*) of section 9.";

(*b*) for sub-section (*3*), the following sub-sections shall be substituted, namely:—

"(*3*) The Hyderabad Bank may, from time to time, with the approval of the State Bank and the Reserve Bank, increase, whether by public issue or by preferential allotment or private placement in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959, its issued capital by issue of equity or preference shares. 38 of 1959.

(*3A*) The issued capital of the Hyderabad Bank shall consist of equity shares or equity and preference shares:

Provided that the issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable) and the terms and conditions subject to which, each class of preference shares may be issued.

(*3B*) The Hyderabad Bank may, with the approval of the State Bank and the Reserve Bank, increase from time to time by way of issuing bonus shares to existing equity shareholders, its issued capital in such manner as the State Bank, with the approval of the Reserve Bank, direct.

(*3C*) No increase or reduction in the issued capital of the Hyderabad Bank shall be made in such a manner that the State Bank holds at any time less than

fifty-one per cent. of the issued capital consisting of equity shares of the Hyderabad Bank.

(*3D*) The Hyderabad Bank may accept the money in respect of shares issued towards increase in issued capital in instalments, make calls and forfeit unpaid shares and re-issue them, in the manner as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.". 38 of 1959.

CHAPTER IV

AMENDMENTS TO THE STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959

Substitution of new section for section 6.

6. For section 6 of the State Bank of India (Subsidiary Banks) Act, 1959 [hereafter in this Chapter referred to as the State Bank of India (Subsidiary Banks) Act], the following section shall be substituted, namely:— 38 of 1959.

Authorised capital of new bank.

"6. (*1*) Subject to the provisions of this Act, the authorised capital of every new bank shall be rupees five hundred crores.

(*2*) The authorised capital of every new bank shall be divided into shares of one hundred rupees each or of such denomination as the new bank may, with the approval of the State Bank, decide.

(*3*) Every new bank may issue the certificates of shares of equivalent values of such denomination as the new bank may, decide, with the approval of the State Bank, in accordance with the procedure as may be prescribed and every shareholder of the new bank shall be entitled to have the certificate of shares of equivalent value of such denomination.

(*4*) Notwithstanding anything contained in sub-section (*1*), the State Bank may, with the approval of the Reserve Bank, authorise a new bank to increase or reduce its authorised capital.".

Amendment of section 7.

7. In section 7 of the State Bank of India (Subsidiary Banks) Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), the issued capital of a new bank shall, consist of such amount as the State Bank may, with the approval of the Reserve Bank, fix, and shall be divided into fully paid-up shares of such denomination in accordance with sub-section (*2*) of section 6.";

(*b*) for sub-sections (*4*) and (*5*), the following sub-sections shall be substituted, namely:—

"(*4*) A new bank may from time to time, with the approval of the State Bank and the Reserve Bank, increase, whether by public issue or by preferential allotment or private placement in accordance with the procedure as may be prescribed, its issued capital by issue of equity or preference shares.

(*5*) The issued capital of a new bank shall consist of equity shares or equity and preference shares:

Provided that the issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable) and the terms and conditions subject to which, each class of preference shares may be issued.

(*6*) A new bank may, with the approval of the State Bank and the Reserve Bank, increase from time to time by way of issuing bonus shares to existing equity shareholders, its issued capital in such manner as the State Bank, with the approval of the Reserve Bank, direct.

(*7*) No increase or reduction in the issued capital of a new bank shall be made in such a manner that the State Bank holds at any time less than fifty-one per cent. of the issued capital consisting of equity shares of new bank.

(*8*) A new bank may accept the money in respect of shares issued towards increase in issued capital in instalments, make calls and forfeit unpaid shares and re-issue them, in the manner as may be prescribed.".

Amendment of section 18.

8. In section 18 of the State Bank of India (Subsidiary Banks) Act, in sub-section (*2*), for the words "fifty-five per cent. of the issued capital", the words "fifty-one per cent. of the issued capital consisting of equity shares" shall be substituted.

Insertion of new section 18A.

9. After section 18 of the State Bank of India (Subsidiary Banks) Act, the following section shall be inserted, namely:—

Right of registered shareholder to nominate.

"18A. (*1*) Every individual registered shareholder of a subsidiary bank may, at any time, nominate, in the prescribed manner, an individual to whom all his rights in the shares shall vest in the event of his death.

(*2*) Where the shares are registered in the name of more than one individual jointly, the joint holders may together nominate in the prescribed manner, an individual to whom all their rights in the shares shall vest in the event of the death of all the joint holders.

(*3*) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares where a nomination made in the prescribed manner purports to confer on any individual the right to vest the shares, the nominee shall, on the death of the shareholder or, as the case may be, on the death of all the joint holders, become entitled to all the rights of the shareholder or, as the case may be, of all the joint holders, in relation to such shares to the exclusion of all other persons unless the nomination is varied or cancelled in the prescribed manner.

(*4*) Where the nominee is a minor, it shall be lawful for the individual registered as the holder of the shares to make nomination to appoint, in the prescribed manner, any person to become entitled to the shares in the event of his death during the minority of the nominee.".

Substitution of new section for section 19.

10. For section 19 of the State Bank of India (Subsidiary Banks) Act, the following section shall be substituted, namely:—

Restriction on voting rights.

"19. No shareholder, other than the State Bank, shall be entitled to exercise voting rights in respect of any shares held by him in excess of ten per cent. of the issued capital of the subsidiary bank concerned:

Provided that the shareholder holding any preference share capital in the subsidiary bank shall, in respect of such capital, have a right to vote only on resolutions placed before such subsidiary bank which directly affect the rights attached to his preference shares:

Provided further that no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent. of the total voting rights of all the shareholders holding preference share capital only.".

Amendment of section 21.

11. Section 21 of the State Bank of India (Subsidiary Banks) Act shall be numbered as sub-section (*1*) thereof and after sub-section (*1*) as so numbered, the following sub-sections shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), it shall be lawful for a subsidiary bank to keep the register of shareholders in computer floppies or diskettes or any other electronic form subject to such safeguards as may be prescribed.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of, or extract from, the register of shareholders, certified to be a true copy under the hand of any officer of the subsidiary bank authorised in this behalf shall in all legal proceedings, be admissible in evidence.". 1 of 1872.

Amendment of section 22.

12. In section 22 of the State Bank of India (Subsidiary Banks) Act, for the words and figures "Notwithstanding anything contained in section 19, no notice of any trust,", the words "No notice of any trust," shall be substituted.

Amendment of section 25.

13. In section 25 of the State Bank of India (Subsidiary Banks) Act,—

(*i*) in sub-section *(1)*—

(*a*) for clause *(a)*, the following clause shall be substituted, namely:—

"(*a*) the Chairman for the time being of the State Bank, *ex officio* or an official of the State Bank nominated by him as Chairman, with the approval of the Reserve Bank;";

(*b*) clause (*b*) shall be omitted;

(*c*) for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) not more than three directors to be elected in the following manner, namely:—

(*i*) if the total amount of holdings of the shareholders (other than the State Bank) of a subsidiary bank is more than one per cent. of the total issued capital, and equal to or less than sixteen per cent. of such capital, one director to be elected, in the prescribed manner, by such shareholders and two directors shall be nominated by the State Bank, or

(*ii*) if the total amount of holdings of the shareholders (other than the State Bank) of a subsidiary bank is more than sixteen per cent. of the total issued capital and equal to or less than thirty-two per cent. of such capital, two directors to be elected in the prescribed manner by such shareholders and one director shall be nominated by the State Bank, or

(*iii*) if the total amount of holdings of the shareholders (other than the State Bank) of a subsidiary bank is more than thirty-two per cent. of the total issued capital, all the three directors to be elected, in the prescribed manner, by such shareholders:

Provided that in case, the total amount of holdings of the shareholders of a subsidiary bank (other than the State Bank) is not more than one per cent. of the total issued capital, all three directors shall be nominated by the State Bank and such directors shall, for the purposes of this Act, be deemed to be directors elected under this clause.

Explanation. —For the purposes of this sub-section, the total amount of holdings of the shareholders (other than the State Bank) whose names are on the register of shareholders of the subsidiary bank three months before the date fixed for election of directors shall be taken into account.";

(*ii*) sub-section (*3*) shall be omitted;

(*iii*) in sub-section (*4*), the words "the Reserve Bank or" shall be omitted.

Insertion of new sections 25A and 25B.

14. After section 25 of the State Bank of India (Subsidiary Banks) Act, the following sections shall be inserted, namely:—

"25A. (*1*) The Directors to be elected under clause (*d*) of sub-section (*1*) of section 25 shall— Fit and proper status of an elected director.

(*a*) have special knowledge or practical experience in respect of one or more of the following matters, namely:—

(*i*) agricultural and rural economy,

(*ii*) banking,

(*iii*) co-operation,

(*iv*) economics,

(*v*) finance,

(*vi*) law,

(*vii*) small-scale industry,

(*viii*) any other matter the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the subsidiary bank;

(*b*) represent the interests of depositors; or

(*c*) represent the interests of farmers, workers and artisans.

(*2*) Without prejudice to the provisions of sub-section (*1*) and notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, no person shall be eligible to be elected as director under clause (*d*) of sub-section (*1*) of section 25 unless he is a person having fit and proper status based upon track record, integrity and such other criteria as the Reserve Bank may notify from time to time in this regard.

(*3*) The Reserve Bank may also specify in the notification issued under sub-section (*2*), the authority to determine the fit and proper status, the manner of such determination, the procedure to be followed for such determinations and such other matters as may be considered necessary or incidental thereto.

(*4*) Where the Reserve Bank is of the opinion that any director of a subsidiary bank elected under clause (*d*) of sub-section (*1*) of section 25 does not fulfil the requirements of sub-sections (*1*) and (*2*), it may, after giving to such director and the subsidiary bank a reasonable opportunity of being heard, by order, remove such director and on such removal, the Board of Directors shall co-opt any other person fulfilling the requirements of the said sub-sections as a director in place of the person so removed till a director is duly elected by the shareholders of the subsidiary bank in the next annual general meeting and the person so co-opted shall be deemed to have been duly elected by the shareholders of the subsidiary bank as a director.

25B. (*1*) If the Reserve Bank is of the opinion that in the interest of banking policy or in the public interest or in the interests of the subsidiary bank or its depositors, it is necessary so to do, it may, from time to time and by order in writing appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the subsidiary bank. Power of Reserve Bank to appoint additional directors.

(*2*) Any person appointed as additional director in pursuance of this section shall—

(*a*) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further period not exceeding three years at a time as the Reserve Bank may specify;

(*b*) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(*c*) not be required to hold qualification shares in the subsidiary bank.

(*3*) For the purpose of reckoning any proportion of the total number of directors of the subsidiary bank, any additional director appointed under this section shall not be taken into account.".

Amendment of section 26.

15. In section 26 of the State Bank of India (Subsidiary Banks) Act, in sub-section (*1*), the words, brackets and letter "clause (*b*) or" shall be omitted.

Amendment of section 27.

16. In section 27 of the State Bank of India (Subsidiary Banks) Act, in sub-section (*5*), in clause (*a*), for the words and figures "Banking Companies Act, 1949", the words and figures "Banking Regulation Act, 1949" shall be substituted.

Amendment of section 28

17. In section 28 of the State Bank of India (Subsidiary Banks) Act, in the proviso, the words, brackets, letter and figures "a director referred to in clause (*b*) of sub-section (*1*) of section 25 or to" shall be omitted.

Amendment of section 34.

18. In section 34 of the State Bank of India (Subsidiary Banks) Act,—

(*a*) in sub-section (*2*), for the words "The chairman of the State Bank", the words "The chairman of the Board of Directors of a subsidiary bank" shall be substituted;

(*b*) in sub-section (*4*), for the words, brackets and letters "clauses (*a*) and (*b*)", the word, brackets and letter "clause (*a*)" shall be substituted;

(*c*) in sub-section (*5*), in the proviso, in clause (*ii*), for the words, brackets and letters "of the Reserve Bank or the State Bank nominated under clause (*b*) or clause (*c*)", the words, brackets and letter "of the State Bank nominated under clause (*c*)" shall be substituted;

(*d*) in sub-section (*6*), the words "and the Reserve Bank" shall be omitted.

Insertion of new section 35A.

19. After section 35 of the State Bank of India (Subsidiary Banks) Act, the following section shall be inserted, namely:—

Supersession of Board of Directors in certain cases.

"35A. (*1*) Where the Reserve Bank, on the recommendation of the State Bank is satisfied that in the public interest or for preventing the affairs of a subsidiary bank being conducted in a manner detrimental to the interest, of the depositors or the subsidiary bank or for securing the proper management of the subsidiary bank, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of the subsidiary bank for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that the total period shall not exceed twelve months.

(*2*) The Reserve Bank may, on supersession of the Board of Directors of the subsidiary bank under sub-section (*1*), appoint, for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.

(*3*) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(*4*) Upon making the order of supersession of the Board of Directors of the subsidiary bank, notwithstanding anything contained in this Act,—

(*a*) the chairman, managing director and other directors shall, as from the date of supersession, vacate their offices as such;

(*b*) all the powers, functions and duties which may, by or under this Act, or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such subsidiary bank, or by a resolution passed in general meeting of the subsidiary bank, shall, until the Board of Directors of the subsidiary bank is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (*2*):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of the subsidiary bank.

(*5*) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, economics or accountancy to assist the Administrator in the discharge of his duties.

(*6*) The committee referred to in sub-section (*5*) shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.

(*7*) The salary and allowances payable to the Administrator and the members of the Committee constituted under sub-section (*5*) by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned subsidiary bank.

(*8*) On and before the expiration of two months before expiry of the period of supersession of the Board of Directors as specified in the order issued under sub-section (*1*), the Administrator of the subsidiary bank, shall call the general meeting of the subsidiary bank to elect new directors and reconstitute its Board of Directors.

(*9*) Notwithstanding anything contained in any other law or in any contract, the memorandum or articles of association, no person shall be entitled to claim any compensation for the loss or termination of his office.

(*10*) The Administrator appointed under sub-section (*2*) shall vacate office immediately after the Board of Directors of the subsidiary bank has been reconstituted.".

Amendment of section 38.

20. In section 38 of the State Bank of India (Subsidiary Banks) Act, in sub-section (*10*), in clause (*a*), for the words and figures "Banking Companies Act, 1949", the words and figures "Banking Regulation Act, 1949" shall be substituted.

Amendment of section 39.

21. In section 39 of the State Bank of India (Subsidiary Banks) Act, for the word "December", the word "March" shall be substituted.

Insertion of new section 40A.

22. After section 40 of the State Bank of India (Subsidiary Banks) Act, the following section shall be inserted, namely:—

Transfer of unpaid or unclaimed dividend to unpaid dividend account.

'40A. (*1*) Where, after the commencement of the State Bank of India (Subsidiary Banks Laws) Amendment Act, 2006, a dividend has been declared by the subsidiary bank but has not been paid, or claimed, within thirty days from the date of declaration, to or by any shareholder entitled to the payment of the dividend, the subsidiary bank shall, within seven days from the date of the expiry of such period of thirty days, transfer the total amount of dividend which remains unpaid, or unclaimed within the said period of thirty days, to a special account to be called "unpaid dividend account of .... (Name of the subsidiary bank)".

Explanation.— In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(*2*) Where the whole or any part of any dividend, declared by the subsidiary bank before the commencement of the State Bank of India (Subsidiary Banks Laws) Amendment Act, 2006, remains unpaid at such commencement, the subsidiary bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (*1*).

(*3*) Any money transferred to the unpaid dividend account of the subsidiary bank in pursuance of this section, which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the subsidiary bank to the Investor Education and Protection Fund established under sub-section (*1*) of section 205C of the Companies Act, 1956. 1 of 1956.

(*4*) The money transferred under sub-section (*3*) to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956.'. 1 of 1956.

Amendment of section 43.

23. In section 43 of the State Bank of India (Subsidiary Banks) Act,—

(*a*) in sub-section (*1*), in clause (*a*), for the word "December", the word "March" shall be substituted;

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The balance-sheet and profit and loss account of the subsidiary bank shall be signed by persons holding the office of the chairman, managing director, and a majority of the other directors of the subsidiary bank in office.".

3GI/06

Amendment of section 44

24. In section 44 of the State Bank of India (Subsidiary Banks) Act,—

(*a*) in sub-section (*2*),—

(*i*) for the words "discuss the balance-sheet", the words "discuss and adopt the balance-sheet" shall be substituted;

(*ii*) for the word "December", the word "March" shall be substituted;

(*b*) in sub-section (*3*), for the word "December", the word "March" shall be substituted.

Amendment of section 48.

25. In section 48 of the State Bank of India (Subsidiary Banks) Act, in sub-section (*2*), for the words and figures "Indian Income-tax Act, 1922", the words and figures "Income tax-Act, 1961" shall be substituted.

Amendment of section 50.

26. In section 50 of the State Bank of India (Subsidiary Banks) Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The officers, advisers and employees of the subsidiary bank concerned shall individually or jointly, or with other officers, advisers and employees in a committee exercise such powers and perform such duties as may, by general or special order, be entrusted or delegated to them by the Board of Directors or its Executive Committee.".

Amendment of section 55.

27. In section 55 of the State Bank of India (Subsidiary Banks) Act, for the words "Banking Companies Act", the words "Banking Regulation Act" shall be substituted.

Amendment of section 63.

28. In section 63 of the State Bank of India (Subsidiary Banks) Act,—

(*a*) in sub-section (*1*), for the words "provisions of this Act", the words "provisions of this Act or any other law for the time being in force" shall be substituted.

(*b*) in sub-section (*2*),—

(*i*) after clause (*f*), the following clauses shall be inserted, namely:—

"(*fa*) the procedure for issuing the certificates of shares;

(*fb*) the procedure with respect to increase, whether by public issue or by preferencial allotment or private placement, the issued capital by issue of equity or preference shares;

(*fc*) the manner of acceptance of share money in instalments, the manner of making calls and the manner of forfeiture of unpaid shares and their re-issue;";

(*ii*) for clause (*g*), the following clauses shall be substituted, namely:—

"(*g*) the maintenance of share registers, and the particulars to be entered in such registers in addition to those specified in sub-section (*1*) of section 21, the safeguards to be observed in the maintenance of the register of shareholders on computer floppies or diskettes or any other electronic form, the inspection and closure of the registers and all other matters connected therewith;

(*ga*) the manner in which every individual registered shareholder nominate, an individual to whom all his rights in the shares shall vest in the event of his death under sub-section (*1*) of section 18A;

(*gb*) the manner in which, the joint holders may nominate an individual to whom all their rights in the shares shall vest in the event of the death of all the joint holders under sub-section (*2*) of section 18A;

(*gc*) the manner in which nomination is varied or cancelled under sub-section (*3*) of section 18A;

(*gd*) the manner in which every individual registered as the holder of the shares to make nomination where nominee is a minor to appoint, any person to become entitled to the shares in the event of his death during the minority of the nominee under sub-section (*4*) of section 18A;".;

(*c*) in sub-section (*4*), for the words "made under this Act", the words "made under this section" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The State Bank of the Saurashtra Act, 1950, the State Bank of Hyderabad Act, 1956 and the State Bank of India (Subsidiary Banks) Act, 1959 has been in force for more than four decades. The said three Acts contain provisions regarding constitution of the State Bank of Saurashtra, the State Bank of Hyderabad and other Subsidiary Banks of the State Bank of India (being the State Bank of Patiala, the State Bank of Bikaner and Jaipur, the State Bank of Indore, the State Bank of Mysore and the State Bank of Travancore), their capital, management and control and other connected matters.

2. There are more than twenty-eight lakhs shares held by private shareholders (other than the State Bank of India) of the four subsidiary banks, *i.e.*, the State Bank of Bikaner and Jaipur, the State Bank of Indore, the State Bank of Mysore and the State Bank of Travancore. The shareholders of these four subsidiary banks are facing certain difficulties due to certain restrictions imposed under the State Bank of India (Subsidiary Banks) Act, 1959. These restrictions, *inter alia,* include, (*a*) lack of dematerialisation facility for the shares (*b*) difficulty in free transferability (*c*) restrictions on individual holdings of shares and their voting rights etc. The shareholders, at the annual general meetings of these four banks, have been expressing, time and again, the difficulty faced by them due to such restrictive provisions in the said Act.

3. The Basel Capital Accord, the current international framework on Capital Adequacy, was adopted in the year 1988 by many banks worldwide and in the year 1992 in India. Afterwards, over the past several years, the Basel Committee on Banking Supervision has worked on a new accord for international convergence on capital standards and released the latest version of the new Basel Capital Accord known as Basel II in June, 2004. With the introduction of the new capital adequacy framework (Basel II), all the banks (including subsidiary banks of the State Bank of India) may be required to increase their capital base to meet minimum requirements. Achievement of the capital adequacy norms under Basel II will improve the basic financial health of the banking system and thus improve its international credibility since banks in many countries are also in the process of adopting these standards.

4. In order to remove the difficulties faced by the shareholders of the subsidiary banks and to facilitate increase of the capital of the subsidiary banks to enable them to raise resources from the market and also to comply with certain guidelines issued by the Securities Exchange Board of India (SEBI) under the Securities Exchange Board of India Act, 1992 and the Depositories Act, 1996, it has become necessary to amend the State Bank of the Saurashtra Act, 1950, the State Bank of Hyderabad Act, 1956 and the State Bank of India (Subsidiary Banks) Act, 1959. The Bill proposes to amend the said three Acts, *inter alia,* to—

(*a*) increase the authorised capital of subsidiary banks to five hundred crores and divide the authorised capital into shares of one hundred rupees each or of such denomination as may be decided by the subsidiary banks, with the approval of the State Bank of India (SBI);

(*b*) allow the subsidiary banks to issue share certificates of such denomination as may be prescribed by regulations made by the SBI with the approval of the RBI to the existing shareholders;

(*c*) fix the issued capital of subsidiary banks by the SBI with the approval of the RBI and also decide, with the approval of the SBI, on the denomination of shares of subsidiary banks;

(*d*) allow the subsidiary banks to raise issued capital by preferential allotment or private placement or public issue in accordance with the procedure as may be specified by regulations made by the SBI with the approval of the RBI and to issue preference shares in accordance with guidelines framed by the RBI;

(*e*) allow the subsidiary banks to issue, with the approval of the SBI and RBI, bonus shares to the equity shareholders;

(*f*) allow reduction of the SBI's shareholding in the subsidiary banks from fifty-five per cent to fifty-one per cent;

(*g*) allow the subsidiary banks to accept share monies in instalments, make calls, and forfeiture of unpaid shares and their re-issue;

(*h*) provide for nomination facility in respect of shares held by individual/ joint shareholders of the subsidiary banks;

(*i*) remove the restriction on individual shareholdings in excess of two hundred shares and increase the percentage of voting rights of shareholders, (other than the SBI) from one per cent to ten per cent of the issued capital of the subsidiary bank concerned;

(*j*) restrict the voting rights of preference shares of subsidiary bank only to resolutions directly affecting their rights and also restrict the preference shareholder to exercise voting rights in respect of preference shares held by him to a ceiling of ten per cent of total voting rights of all the shareholders holding preference share capital only.

(*k*) allow the chairman of the SBI to nominate an official of the SBI as the Chairman of the Board of a subsidiary bank, with the approval of the RBI;

(*l*) omit the provisions relating to nomination of official of the RBI on the Board of Directors of subsidiary bank and to make provisions for nomination of additional director by the RBI as and when considered necessary, in the interest of banking policy and depositors' interest etc.;

(*m*) increase the number of elected directors representing shareholders of subsidiary bank limited to a maximum of three subject to different percentage of public ownership;

(*n*) specify the qualification regarding eligibility criteria including "fit and proper" criteria for elected directors of subsidiary bank and to confer power upon the RBI to remove elected directors who are not fit and proper and also to allow the Board of Directors of a subsidiary bank to co-opt any other person who is fit and proper in his place;

(*o*) confer power upon the RBI to supersede the Board of Directors of subsidiary banks in public interest or for depositor's interest or for securing proper management of the subsidiary banks on the recommendation of the SBI and to appoint an administrator and a committee to assist the administrator;

(*p*) allow transfer of unpaid or unclaimed dividend of subsidiary bank up to thirty days to "unpaid dividend account" and after seven years to the "Investor Education and Protection Fund" established under section 205C of the Companies Act, 1956;

(*q*) entitle the shareholders present in the annual general meeting to "adopt" the balance sheet.

5. The Bill seeks to achieve the above objectives.

P. CHIDAMBARAM.

NEW DELHI;
The 11th May, 2006

Notes on clauses

Clause 2.—This clause seeks to substitute section 5 of the State Bank of Saurashtra Act,1950 relating to authorised capital.

Under the existing provisions contained in said section 5, the authorised capital of the State Bank of Saurashtra shall be two crore of rupees, divided into shares of one hundred rupees each. However, the State Bank of India may, with the approval of the Reserve Bank of India, authorise the State Bank of Saurashtra to increase or reduce its authorised capital. Where the authorised capital is so increased, the shares issued shall be of the denomination of one hundred rupees each.

It is proposed to increase the authorised capital of the State Bank of Saurashtra to rupees five hundred crores.

It is further proposed to provide that the authorised capital of the State Bank of Saurashtra shall be divided into shares of one hundred rupees each or such denomination as the State Bank of Saurashtra may, with the approval of the State Bank of India, decide.

It also provides that the State Bank of Saurashtra may issue the certificates of shares of equivalent values in such denomination as it may decide with the approval of the State Bank of India in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.

Clause 3.—This clause seeks to amend section 6 of the State Bank of Saurashtra Act, 1950 relating to issued capital.

Under the existing provisions contained in sub-section (*1*) of the said section, the issued capital of the State Bank of Saurashtra shall consist of such amount as the State Bank of India may, with the approval of the Reserve Bank of India, fix. The issued capital is divided into fully paid-up shares of one hundred rupees each.

It is proposed to insert new sub-section (*1A*) in the aforesaid section to provide that the issued capital of the State Bank of Saurashtra shall consist of such amount as the State Bank of India may, with the approval of the Reserve Bank, fix and shall be divided into fully paid-up shares of such denomination in accordance with sub-section (*2*) of section 5.

Under the existing provisions contained in sub-section (*3*) of the aforesaid section, the State Bank of Saurashtra may, with the approval of the State Bank of India and the Reserve Bank of India, increase its issued capital and the increased issued capital shall consist of fully paid up shares which shall be issued in such manner as the State Bank of India may, with the approval of the Reserve Bank of India may, direct. The increase or reduction of the issued capital of the State Bank of Saurashtra cannot be made in a manner which makes the State Bank of India to hold less than fifty-five per cent. of the issued capital of the State Bank of Saurashtra.

It is proposed to substitute the said sub-section (*3*) by new sub-sections (*3*), (*3A*), (*3B*), (*3C*) and (*3D*).

The proposed new sub-section (*3*) provides that the State Bank of Saurashtra may, with the approval of the State Bank of India and the Reserve Bank of india, increase its issued capital by issue of equity or preference shares. The increase of issued capital can be by public issue or by preferential allotment or private placement in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.

The proposed new sub-section (*3A*) provides that the issued capital of the State Bank of Saurashtra shall consist of equity shares or equity and preference shares. The issue of preference shares shall be in accordance with the guidelines framed by the

Reserve Bank of India specifying the class of and the extent of, issue of, each class of such preference shares (whether perpetual or irredeemable or redeemable) and the terms and conditions subject to which each class of preference shares may be issued.

The proposed new sub-section (*3B*) provides that with the approval of the State Bank of India and the Reserve Bank of India, the State Bank of Saurashtra may, increase its issued capital by issuing bonus shares to the existing shareholders in such manner as the State Bank of India, with the approval of the Reserve Bank of India, direct.

The proposed new sub-section (*3C*) provides that the issued capital cannot be increased or reduced in a manner which makes the State Bank of India to hold at any time less than fifty-one per cent. instead of fifty-five per cent. of the issued capital consisting of equity shares of the State Bank of Saurashtra.

The proposed new sub-section (*3D*) provides that the State Bank of Saurashtra may accept the money in respect of shares issued towards increase in issued capital in instalments, make calls and forfeit unpaid shares and re-issue them in the manner as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.

Clause 4.—This clause seeks to amend section 9 of the State Bank of Hyderabad Act, 1956 relating to authorised capital.

Under the existing provisions contained in the said section 9, the authorised capital of the State Bank of Hyderabad shall be one crore rupees, divided into shares of one hundred rupees each. However, the State Bank of India may, with the approval of the Reserve Bank of India, authorise the State Bank of Hyderabad to increase or reduce its authorised capital. Where the authorised capital is so increased, the shares issued shall be of the denomination of one hundred rupees each.

It is proposed to increase the authorised capital of the State Bank of Hyderabad to rupees five hundred crores.

It is further proposed to provide that the authorised share capital of the State Bank of Hyderabad shall be divided into shares of one hundred rupees each or such denomination as the State Bank of Hyderabad may, with the approval of the State Bank of India, decide.

It also proposed to provide that the State Bank of Hyderabad may issue the certificates of shares of equivalent values in such denomination as it may decide with the approval of the State Bank of India in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.

Clause 5.—This clause seeks to amend section 10 of the State Bank of Hyderabad Act, 1956 relating to issued capital.

Under the existing provisions contained in sub-section (*1*) of the said section, the issued capital of the State Bank of Hyderabad shall consist of such amount as the State Bank of India may, with the approval of the Reserve Bank of India, fix. The issued capital is divided into fully paid up shares of hundred rupees each.

It is proposed to insert new sub-section (*1A*) in the aforesaid section to provide that the issued capital of the State Bank of Hyderabad shall consist of such amount as the State Bank of India may, with the approval of the Reserve Bank of India, fix and shall be divided into fully paid up shares of such denomination in accordance with sub-section (*2*) of section 9.

Under the existing provisions contained in sub-section (*3*) of the aforesaid section, the State Bank of Hyderabad may, with the approval of the State Bank of India and the Reserve Bank of India, increase its issued capital and the increased issued capital shall consist of fully paid up shares which shall be issued in such manner as the State Bank of India may, with the approval of the Reserve Bank of India may, direct. The increase of the issued capital of the State Bank of Hyderabad cannot be made in a manner which

makes the State Bank of India to hold less than fifty-five per cent. of the issued capital of the State Bank of Hyderabad.

It is proposed to substitute the said sub-section (*3*) by new sub-sections (*3*), (*3A*), (*3B*), (*3C*) and (*3D*).

The proposed new sub-section (*3*) provides that the State Bank of Hyderabad, may, with the approval of the State Bank of India and the Reserve Bank of India, increase its issued capital by issue of equity or preference shares. The increase of issued capital can be by public issue or by preferential allotment or private placement in accordance with the procedure as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.

The proposed new sub-section (*3A*) provides that the issued capital of the State Bank of Hyderabad shall consists of equity shares or equity and preference shares. The issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank of India specifying the class of, and, the extent of issue, of each class of such preference shares (whether perpetual or irredeemable or redeemable) and the terms and conditions subject to which, each class of preference shares may be issued.

The proposed new sub-section (*3B*) provides that the State Bank of Hyderabad may, with the approval of the State Bank of India and the Reserve Bank of India, increase its issued capital by issuing bonus shares to existing shareholders in such manner as the State Bank of India with the approval of the Reserve Bank of India, direct.

The proposed new sub-section (*3C*) provides that the issued capital of the State Bank of Hyderabad cannot be increased or reduced in a manner which makes the State Bank of India, to hold at any time less than fifty-one per cent. instead of fifty-five per cent. of the issued capital consisting of equity shares of the State Bank of Hyderabad.

The proposed new sub-section (*3D*) provides that the State Bank of Hyderabad may accept the money in respect of shares issued towards increase in issued capital in instalments, make calls and forfeit unpaid shares and re-issue them in the manner as may be specified by regulations made under section 63 of the State Bank of India (Subsidiary Banks) Act, 1959.

Clause 6.—This clause seeks to substitute section 6 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to the authorised capital of new banks.

Under the existing provisions contained in the said section 6, the authorised capital of the State Bank of Mysore and the State Bank of Travancore is rupees two crores each and the authorised capital of every other new Bank, *i.e.*, the State Bank of Bikaner and Jaipur the State Bank of Indore and the State Bank of Patiala is rupees one crore.

It is proposed to increase the authorised capital of each new bank to rupees five hundred crores.

It is further proposed to provide that the authorised share capital of every new bank shall be divided into share of one hundred rupees each or such denomination as the new bank may, with the approval of the State Bank of India, decide.

It also provides that every new bank may issue the certificates of shares of equivalent values in such denomination as it may decide with the approval of the State Bank of India in accordance with the procedure as may be specified by regulations made under section 63 of the aforesaid Act.

Clause 7.—This clause seeks to amend section 7 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to the issued capital of new banks.

Under the existing provisions contained in sub-section (*1*) of the said section, the issued capital of a new bank shall consist of such amount as the State Bank of India may, with the approval of the Reserve Bank of India, fix. The issued capital is divided into fully paid up shares of hundred rupees each.

It is proposed to insert new sub-section (*1A*) in the aforesaid section to provide that the issued capital of a new bank shall consist of such amount as the State Bank of

India may, with the approval of the Reserve Bank of India, fix and be divided into fully paid up shares of such denomination in accordance with sub-section (*2*) of section 6.

It is proposed to substitute the sub-sections (*4*) and (*5*) of the said section by new sub-sections (4) to (8).

Under the existing provisions contained in sub-section (*4*), a new bank may, with the approval of the State Bank of India and the Reserve Bank of India, increase its issued capital and the increased issued capital shall consist of fully paid up shares which shall be issued in such manner as the State Bank of India may, with the approval of the Reserve Bank of India may, direct.

The proposed new sub-section (*4*) provides that a new bank may, with the approval of the State Bank of India and the Reserve Bank of India, increase its issued capital by issue of equity or preference shares. The increase of issued capital can be by public issue or by preferential allotment or private placement in accordance with the procedure as may be specified by regulation made under section 63 of the aforesaid Act.

The proposed new sub-section (*5*) provides that the issued capital of the new bank shall consist of equity shares or equity and preference shares. The issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank of India specifying the class of, and the extent of, issue of each preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which, each class of preference shares may be issued.

The proposed new sub-section (*6*) provides for increase of issued capital of a new Bank by issue of bonus shares to the existing equity shareholders in such manner as the State Bank of India may with the approval of the Reserve Bank of India, direct.

Under the existing provisions contained in sub-section (5) of the aforesaid section 7, the increase or reduction of the issued capital of a new bank cannot be made in a manner which makes the State Bank of India to hold at any time less than fifty-five per cent. of the issued capital of that new bank.

The proposed new sub-section (*7*) provides that the issued capital of a new Bank cannot be increased or reduced in a manner which makes the State Bank of India to hold at any time less than fifty-one per cent. instead of fifty-five per cent. of the issued capital consisting of equity shares of new bank.

The proposed new sub-section (*8*) provides that the new bank, may accept the money in respect of shares issued towards increase in issued capital in instalments, make calls and forfeit unpaid shares and re-issue them in the manner as may be specified by regulation made under section 63 of the State Bank (Subsidiary Banks) Act, 1959.

Clause 8.—This clause proposes to amend section 18 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to transferability of shares.

Under the existing provisions contained in sub-section (*2*) of the said section, the State Bank of India cannot transfer any shares held by it in any subsidiary bank (the State Bank of Bikaner and Jaipur, the State Bank of Indore, the State Bank of Mysore, the State Bank of Patiala, the State Bank of Travancore and the State Bank of Hyderabad and the State Bank of Saurashtra) if such transfer result in reducing the shares held by it to less than fifty-five per cent. of the issued capital of that subsidiary bank.

It is proposed to reduce the said limit from fifty-five per cent. to fifty-one per cent. of the issued capital of that subsidiary bank.

Clause 9.—This clause proposes to insert a new section 18A in the State Bank of India (Subsidiary Banks) Act, 1959 relating to right of registered shareholder to nominate.

The provisions contained in new section, *inter alia*, allows an individual registered shareholder and individual joint holders to nominate an individual to whom all his or their rights in shares shall vest in the event of death of such individual or joint holders.

The nominee, on the death of the shareholder or all joint shareholders, will become entitled to all the rights of the shareholder or joint holders, as the case may be. It also contains provisions relating to a nominee who is a minor.

Clause 10.—This clause seeks to substitute a new section for section 19 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to restriction on individual holdings.

Under the existing provisions contained in sub-section (*1*) of the said section 19, no person referred to in the proviso to that sub-section shall be registered as a shareholder in respect of any shares in a subsidiary bank held by him, whether in his own name or jointly with any other person, in excess of two hundred shares, or be entitled to payment of any dividend on the excess shares held by him, or to exercise any of the rights of a shareholder in respect of such excess shares otherwise than for the purpose of selling them. The persons referred to in the said sub-section are (*i*) the State Bank of India (*ii*) a State Government; (*iii*) a Corporation; (*iv*) an insurer as defined in the Insurance Act, 1938; (*v*) a local authority; (*vi*) a co-operative society; (*vii*) a trustee of a public or private religious or charitable trust; (*viii*) a shareholder of an existing bank who is allotted any shares under sub-section (*9*) of section 13 of the said Act.

Under the existing provisions contained in sub-section (3) of the said section, no shareholder, (other than the State Bank of India) shall be entitled to exercise voting rights in respect of any shares held by him in excess of one per cent. of the issued capital of the subsidiary bank concerned.

It is proposed to increase the percentage of voting rights to ten per cent. of the issued capital of subsidiary bank.

It is also proposed that the shareholder holding any preference share capital in the subsidiary bank shall, in respect of such capital, have a right to vote only on resolutions placed before such subsidiary bank which directly affect the rights attached to his preference shares and such preference shareholder shall not be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent. of the total voting rights of all the shareholders holding preference share capital only.

Clause 11.—This clause seeks to amend section 21 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to register of shareholders.

The existing provisions contained in the said section provides that every subsidiary bank shall keep at its head office a register, in one or more books, of the shareholders and shall enter therein, *inter alia*, the particulars relating to the names, addresses and occupation, if any, of the shareholder, distinguish each share by its denoting number, the date on which each person is so entered as a shareholder; and the date on which any person ceases to be a shareholder and such other particulars as may be prescribed.

It is proposed to insert two new sub-sections (*2*) and (*3*), to provide that a subsidiary bank may keep the said register in computer floppies or diskettes or any other electronic form subject to such safeguards as may be specified by regulations made under section 63 of the aforesaid Act, 1959. It further provides that a copy of, or extract from, the register of shareholders, certified to be a true copy under the hand of any officer of the subsidiary bank authorised in this behalf shall, notwithstanding anything contained in the Indian Evidence Act, 1872, be admissible in evidence in all legal proceedings.

Clause 12.—This clause seeks to amend section 22 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to trusts not to be entered on the register.

It is proposed to omit the words "Notwithstanding anything contained in section 19". The proposed amendment is of consequential nature.

Clause 13.—This clause seeks to amend section 25 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to composition of the Board of Directors.

The existing provisions contained in clause (*a*) of sub-section (*1*) of the said section provides that the Board of Directors of a subsidiary bank shall consist of the chairman for the time being of the State Bank of India, as, *ex officio,* member.

It is proposed to substitute said clause so as to provide that the Board of Directors of a subsidiary bank, *inter alia.* shall consist of the chairman for the time being of the State Bank of India, or an official of the State Bank of India nominated by chairman, with the approval of the Reserve Bank of India, as, *ex officio,* member.

The existing provision contained in clause (*b*) of sub-section (*1*) provides that the Board of Directors of a subsidiary bank, *inter alia,* shall consist of an officer by the Reserve Bank of India nominated.

It is proposed to omit the said clause.

The existing provisions contained in clause (*d*) of sub-section (*1*) of the aforesaid said section provides that the Board of Directors of a subsidiary bank, *inter alia,* shall consist of two directors to be elected in the prescribed manner by the shareholders, other than the State Bank of India.

It is proposed to substitute the said clause (*d*) so as to provide that the Board of Directors of a subsidiary bank, *inter alia,* shall consist of not more than three directors to be elected in the manner specified in that clause. It provides that (a) if the total amount of holdings of the shareholders (other than the State Bank of India) of a subsidiary bank is more than one per cent. of the total issued capital, and equal to or less than sixteen per cent. of such capital, one director to be elected, in the manner as may be specified by regulations made under section 63 of the aforesaid Act, by such shareholders and two directors shall be nominated by the State Bank of India, or (b) if the total amount of holdings of the shareholders (other than the State Bank of India) of a subsidiary bank is more than sixteen per cent. of the total issued capital and equal to or less than thirty-two per cent. of such capital, two directors to be elected in the manner as may be specified by regulations made under section 63 of the aforesaid Act by such shareholders and one director shall be nominated by the State Bank of India, or (c) if the total amount of holdings of the shareholders (other than the State Bank of India) of a subsidiary bank is more than thirty-two per cent. of the total issued capital, all the three directors to be elected, in the manner as may be specified by regulations made under section 63 of the aforesaid Act, by such shareholders. However, in case, the total amount of holdings of the shareholders of a subsidiary bank (other than the State Bank of India) is not more than one per cent. of the total issued capital, all three directors shall be nominated by the State Bank of India and such directors shall, be deemed to be directors elected under this clause.

It further clarifies that the total amount of holdings of the shareholders (other than the State Bank) whose names are on the register of shareholders of the subsidiary bank three months before the date fixed for election of directors shall be taken into account.

It is also proposed to omit sub-section (*3*) and amend sub-section (*4*). The proposed amendment is consequential nature.

Clause 14.—This clause seeks to insert in the State Bank of India (subsidiary Banks) Act, 1959, a new section 25A relating to fit and proper status of an elected director and also insert new section 25B relating to power of the Reserve Bank to appoint additional directors.

The provisions contained in sub-section (*1*) of the said new section 25A, *inter alia*, provides that the directors to be elected under clause (*d*) of sub-section (*1*) of section 25 shall have special knowledge or practical experience in respect of one or more of the matters, namely, agricultural and rural economy, banking, co-operation,

economics, finance, law, small-scale industry or any other matter the special knowledge of, and practical experience which would, in the opinion of the Reserve Bank, be useful to the subsidiary bank; or such elected directors should represent the interests of depositors; or represent the interests of farmers, workers and artisans.

The provisions contained in sub-section (*2*) of the aforesaid new section 25A provides that no person shall be eligible to be elected as director under clause (*d*) of sub-section (*1*) of section 25 unless he is a person having fit and proper status based upon track record, integrity and such other criteria as the Reserve Bank of India may notify from time to time in this regard.

The provisions contained in sub-section (*3*) of the aforesaid new section 25A provides that the Reserve Bank of India may also specify in the notification issued under sub-section (*2*), the authority to determine the fit and proper status, the manner of such determination, the procedure to be followed for such determination, and such other matters as may be considered necessary or incidental thereto.

The provisions contained in sub-section (*4*) of the aforesaid proposed new section 25A provides that where the Reserve Bank of India is of the opinion that any director of a subsidiary bank elected under clause (*d*) of sub section (*1*) of section 25 does not fulfil the requirements of sub-sections (*1*) and (*2*) of the proposed new section 25A, it may, after giving to such director and the subsidiary bank a reasonable opportunity of being heard, by order, remove such director and on such removal, the Board of Directors shall co-opt any other person fulfilling the requirements of the said sub-sections as a director in place of the person so removed till a director is duly elected by the shareholders of the subsidiary bank in the next annual general meeting and the person so co-opted shall be deemed to have been duly elected by the shareholders of the subsidiary bank as a director.

The provisions contained in sub-section (*1*) of the said new section 25B provide that if the Reserve Bank of India is of the opinion that in the interest of banking policy or in the public interest or in the interest of the subsidiary bank or its depositors, it is necessary so to do, it may, from time to time and by order in writing appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the subsidiary bank.

The provisions contained in sub-section (*2*) of the aforesaid new section 25B provide that any person appointed as additional director in pursuance of this section shall hold office during the pleasure of the Reserve Bank of India and subject thereto for a period not exceeding three years or such further period not exceeding three years at a time as the Reserve Bank may specify and shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto and not be required to hold qualification shares in the subsidiary bank.

The provisions contained in sub-section (*3*) of the aforesaid new section 25B provides that for the purpose of reckoning any proportion of the total number of directors of the subsidiary bank, any additional director appointed under this section shall not be taken into account.

Clause 15.—This clause seeks to amend section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to term of office of directors.

The existing provisions contained under sub-section (*1*) of section 26 provides that the directors nominated under clause (*b*), (*c*) or (*e*) of sub-section (*1*) of section 25 shall hold office at the pleasure of the nominating authority.

It is proposed to omit the reference of clause (*b*) of sub-section (*1*) of section 25 which relates to nomination of officer of the Reserve Bank of India as director in a subsidiary bank which is proposed to be omitted by clause 13 of the Bill. The amendment is of consequential nature.

Clause 16.—This clause seeks to amend section 27 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to disqualification for directorship.

It is proposed to substitute the reference of "Banking Companies Act, 1949", by the "Banking Regulation Act, 1949". The proposed amendment is of consequential nature.

Clause 17.—This clause seeks to amend section 28 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to vacation of office of directors.

The existing provisions contained under said section 28 provides that the vacation of office of directors such as resignation, absence without permission, etc., which are applicable to the directors nominated by the Reserve Bank of India.

It is proposed to omit the reference of clause (*b*) of sub-section (*1*) of section 25 which relates to nomination of office of the Reserve Bank of India as director in a subsidiary bank which is proposed to be omitted by clause 13 of the Bill. The proposed amendment is of consequential nature.

Clause 18.—This clause seeks to amend section 34 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to meetings of the Board of Directors.

The existing provisions contained in sub-section (*2*) provides that the chairman of the State Bank of India shall preside at every meeting of the Board of Directors of a subsidiary bank and, in his absence, such one of the directors as may generally or in relation to any particular meeting be authorised by the chairman in this behalf shall preside and in the absence of the chairman and also failing such authorisation, the directors of the subsidiary bank present at the meeting shall elect one from among themselves to preside at the meeting.

It is proposed to provide that the chairman of the Board of Directors of a subsidiary bank shall preside at every meeting of the Board of Directors of the subsidiary bank instead of the chairman of the State Bank of India.

It is also proposed to omit in sub-sections (*4*) and (*5*), the reference of clause (*b*) of sub-section (*1*) of section 25 which relates to nomination of officer of the Reserve Bank of India as director in a subsidiary bank which is proposed to be omitted by clause 13 of the Bill.

The provisions contained in sub-section (*6*) provides that a copy of the minutes of every meeting of the Board of Directors of a subsidiary bank, together with copies of all connected papers, shall be forwarded to the State Bank of India and the Reserve Bank of India as soon as possible.

It is proposed to omit the reference of the Reserve Bank of India from the scope of aforesaid section so as to provide that a copy of the minutes of every meeting of the Board of Directors of a subsidiary bank, together with copies of all connected papers, shall not be required to be forwarded to the Reserve Bank of India.

Clause 19.—This clause seeks to insert section 35A of the State Bank of India (Subsidiary Banks) Act, 1959 relating to supersession of Board of Directors in certain cases.

The provisions contained in the said new section 35A, *inter alia,* provides that where the Reserve Bank of India, on the recommendation of the State Bank of India, is satisfied that in the public interest or for preventing the affairs of a subsidiary bank being conducted in a manner detrimental to the interest of the depositors or the subsidiary bank or for securing the proper management of the subsidiary bank, it is necessary so to do, the Reserve Bank of India may, for reasons to be recorded in writing, by order, supersede the Board of Directors of the subsidiary bank for a period not exceeding six months as may be specified in the order. However, the period of supersession of the Board of Directors may be extended from time to time, but that total period shall not exceed twelve months.

It further provides that the Reserve Bank of India may, on supersession of the Board of Directors of the subsidiary bank, appoint an Administrator (not being an officer of the Central Government or State Government) who has experience in law, finance, banking, economics or accountancy for such period as it may determine. The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions. The Administrator appointed shall vacate office immediately after the Board of Directors of the subsidiary bank has been reconstituted.

It also contains provisions in connection with or arising out of supersession of the Board of Directors of the subsidiary bank.

Clause 20.—This clause seeks to amend section 38 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to acquisition of business of other banks.

It is proposed to substitute the reference of "Banking Companies Act", by the "Banking Regulation Act". The proposed amendment is of consequential nature.

Clause 21.—This clause seeks to amend section 39 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to closing of annual accounts.

The existing provisions contained in section 39 of the said Act, *inter alia,* provide that a subsidiary bank shall cause its books to be closed and balanced as on the 31st day of December or such other date as the Central Government may specify. It is proposed to change the said period from the month of December to the month of March.

Clause 22.—This clause seeks to insert new section 40A in the State Bank of India (Subsidiary Banks) Act, 1959 relating to transfer of unpaid or unclaimed dividend to unpaid dividend account.

The provisions contained in the proposed new section provides that in case a dividend has been declared by the subsidiary bank but has not been paid, or claimed, within thirty days from the date of declaration, to or by, any shareholder entitled to the payment of the dividend, the subsidiary bank shall, within seven days from the date of the expiry of such period of thirty days, transfer the total amount of dividend which remains unpaid, or unclaimed within the said period of thirty days, to a special account to be called "unpaid dividend" account of such subsidiary bank. The expression "dividend which remains unpaid" has been defined to mean any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

It further provides that where the whole or any part of any dividend, declared by the subsidiary bank before the commencement of the proposed legislation remains unpaid at such commencement, the subsidiary bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (*1*) of the said new section.

It also provides that any money transferred to the unpaid dividend account of the subsidiary bank in pursuance of the proposed new section, which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the subsidiary bank to the Investor Education and Protection Fund established under sub-section (*1*) of section 205C of the Companies Act, 1956 and the money so transferred to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the said Act.

Clause 23.—This clause seeks to amend section 43 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to returns to be furnished by a subsidiary bank.

The existing provisions contained in the said section, *inter alia*, provide that a subsidiary bank shall furnish, to the State Bank of India, the Reserve Bank of India and the Central Government, within three months from the 31st day of December or the date notified under section 39, as the case may be, as on which its books are

closed and balanced, its balance-sheet, together with the profit and loss account and the auditor's report, and a report by its Board of Directors on the working and activities of the subsidiary bank during the period covered by the accounts.

It is proposed to change the said period from the month of December to the month of March.

It is further proposed to provide that the balance-sheet and profit and loss account of the subsidiary bank shall be signed by persons holding the office of the chairman, managing director, and a majority of the other directors in office of the subsidiary bank.

Clause 24.—This clause seeks to amend section 44 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to general meetings.

The existing provisions contained in sub-section (*2*) of the said section provides that shareholders present at an annual general meeting shall be entitled to discuss the balance-sheet and profit and loss account of the bank concerned, made up to the previous 31st day of December, or the date notified under section 39, as the case may be, the report of the Board of Directors on the working and activities of that bank for the period covered by the accounts and the auditors' report on the balance-sheet and accounts.

It is proposed to provide that shareholders present at an annual general meeting shall be entitled to discuss and adopt the balance-sheet instead of to discuss balance-sheet made up to the previous 31st day of March instead of 31st day of December, or the date notified under section 39, as the case may be, the report of the Board of Directors on the working and activities of that bank for the period covered by the accounts and the auditors' report on the balance-sheet and accounts.

Clause 25.—This clause seeks to amend section 48 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to cost of development programme.

It is proposed to substitute the reference of Indian Income-tax Act, 1922, by the Income-tax Act, 1961. The proposed amendment is of consequential nature.

Clause 26.—This clause seeks to amend section 50 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to staff of a subsidiary bank.

It is proposed to insert a new sub-section (*1A*) in the said section so as to provide that the officers, advisers and employees of the subsidiary bank concerned shall individually or jointly, or with other officers, advisers and employees in a committee exercise such powers and perform such duties as may, by general or special order, be entrusted or delegated to them by the Board of Directors or its Executive Committee.

Clause 27.—This clause seeks to amend section 55 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to non-applicability of the Companies Act, 1956, and the Banking Companies Act, 1949 to certain existing banks.

It is proposed to substitute the reference of "Banking Companies Act", by the "Banking Regulation Act". The proposed amendment is of consequential nature.

Clause 28.—This clause seeks to amend section 63 of the State Bank of India (Subsidiary Banks) Act, 1959 relating to power of the State Bank of India to make regulations.

The existing provisions contained in the said section confers power upon the State Bank of India to make, with the approval of the Reserve Bank of India, by the notification in the Official Gazette, the regulations in respect of a subsidiary bank.

Certain provisions of the Bill confer power upon the State Bank of India to make the regulations in respect of certain matters. It is proposed to amend the said section so as to include within the scope of the said section the said matters in respect of which the State Bank of India may make the regulations.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 28 of the Bill seeks to amend section 63 of the State Bank of India (Subsidiary Banks) Act, 1959 which empowers the State Bank, with the approval of the Reserve Bank, to make regulations in respect of a subsidiary bank (being the State Bank of Saurashtra, the State Bank of Hyderabad and subsidiary banks of State Bank of India), not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act or any other law for the time being in force. These matters, *inter alia,* relate to (*a*) the procedure for issuing the certificates of shares, (*b*) the procedure with respect to increase, whether by public issue or by preferential allotment or private placement, the issued capital by issue of equity or preference shares, (*c*) the manner of acceptance of share money in instalments, the manner of making calls and the manner of forfeiture of unpaid shares and their re-issue, (*d*) the maintenance of share registers, and particulars to be entered in such registers in addition to those specified in sub-section (*1*) of section 21, the safeguards to be observed in the maintenance of the register of shareholders on computer floppies or diskettes or any other electronic form, the inspection and closure of the registers and all other matters connected therewith, (*e*) the manner in which every individual registered shareholder nominate an individual to whom all his rights in the shares shall vest in the event of his death under sub-section (*1*) of section 18A, (*f*) the manner in which, the joint holders may nominate an individual to whom all their rights in the shares shall vest in the event of the death of all the joint holders under sub-section (*2*) of section 18A, (*g*) the manner in which nomination is varied or cancelled under sub-section (*3*) of section 18A, (*h*) the manner in which every individual registered as holder of the shares to make nomination where nominee is a minor to appoint any person to become entitled to the shares in the event of his death during the minority of the nominee under sub-section (*4*) of section 18A.

2. The regulations made under this section shall have to be laid before both Houses of Parliament.

3. The matters in respect of which regulations may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 48 OF 2006

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

Short title and commencement

1. (*1*) This Act may be called the Constitution (One Hundred and Sixth Amendment) Act, 2006.

(*2*) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint.

2. After Part IXA of the Constitution, the following Part shall be inserted, namely:— Insertion of Part IXB.

'PART IXB

THE CO-OPERATIVE SOCIETIES

243ZH. In this Part, unless the context otherwise requires,— Definitions.

(*a*) "authorised person" means a person referred to as such in article 243ZQ;

(*b*) "board" means the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction and control of the management of the affairs of a society is entrusted to;

(*c*) "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(*d*) "multi-State co-operative society" means a society with objects not confined to one State and registered or deemed to be registered under any law for the time being in force relating to such co-operatives;

(*e*) "office bearer" means a President, Vice-President, Chairperson, Vice-Chairperson, Secretary or Treasurer of a co-operative society and includes any other person to be elected by the board of any co-operative society;

(*f*) "Registrar" means the Central Registrar appointed by the Central Government in relation to the multi-State co-operative societies and the Registrar for co-operative societies appointed by the State Government under the law made by the Legislature of a State in relation to co-operative societies;

(*g*) "State Act" means any law made by the Legislature of a State;

(*h*) "State level co-operative society" means a co-operative society having its area of operation extending to the whole of a State and defined as such in any law made by the Legislature of a State.

243ZI. Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary, democratic member- control, member-economic participation and autonomous functioning. Incorporation of co-operative societies.

243ZJ. (1) The board shall consist of such number of directors as may be provided by the Legislature of a State, by law: Number and term of members of board and its office bearers.

Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one, except in the case of a State level co-operative society.

(2) The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be co-terminus with the term of the board:

Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.

(3) The Legislature of a State shall, by law, make provisions for co-option of persons to be members of the board having experience in the field of banking, management, finance or specialisation in any other field relating to the objects and activities undertaken by the co-operative society as members of the board of such society:

Provided that the number of such co-opted members shall not exceed two in addition to twenty-one directors specified in the proviso to clause (1):

Provided further that such co-opted members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to be eligible to be elected as Vice-Chairman or Vice-President, Chairman or President of the board.

Election of members of board

243ZK. (1) Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected board assumes office immediately on the expiry of the term of the outgoing board:

Provided that in case the co-operative society has failed to conduct such elections in time the Registrar or an authority or officer authorised by the Registrar shall cause the elections to be conducted within a period of sixty days after the expiry of the term of the outgoing board at the cost of the co-operative society.

(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in the general body of the co-operative society:

Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such elections.

Supersession of board and interim management.

243ZL. (1) Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:

Provided that the board may be superseded in case —

(*i*) of its persistent default; or

(*ii*) of negligence in the performance of its duties; or

(*iii*) the board has committed any act prejudicial to the interests of the co-operative society or its members; or

(*iv*) there is a stalemate in the constitution or functions of the board; or

(*v*) the general body has failed to conduct the elections as per the provisions of article 243ZK:

Provided further that the board of any such co-operative society shall not be superseded where there is no Government shareholding of loan or financial assistance or any guarantee by the Government:

Provided also that in case of a co-operative society doing the business of banking, the provisions of the Banking Regulation Act, 1949 shall also apply: 10 of 1949.

Provided also that in case of a co-operative society, other than a multi-State co-operative society, doing the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted.

(2) In case of supersession of a board, the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period specified in clause (1) and hand over the management to the elected board.

(3) The Legislature of a State may, by law, make provisions for the conditions of service of the administrator.

243ZM. (1) The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year.

Audit of accounts of co-operative societies.

(2) The Legislature of a State shall, by law, lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing the co-operative societies.

(3) Every co-operative society shall cause to be audited by an auditor referred to in clause (2) appointed by the general body of the co-operative society.

(4) The accounts of every co-operative society shall be audited before the expiry of a period of six months of the financial year to which such accounts relate.

243ZN. The Legislature of a State may, by law, make provisions that the annual general body meeting of every co-operative society shall be convened within a period of six months of close of the financial year to transact the business as may be provided in such law.

Convening of the general body meetings.

243ZO. (1) The Legislature of a State may, by law, provide for access to every member of a co-operative society to the books, information and accounts of the co-operative society kept in regular transaction of its business with such member.

Right of a member to get information.

(2) The Legislature of a State may, by law, make provisions to ensure the participation of members in the management of the co-operative society providing minimum requirement of attending meetings by the members and utilising the minimum level of services as may be provided in such law.

(3) The Legislature of a State may, by law, provide for co-operative education and training for its members.

243ZP. Every co-operative society shall file returns, within six months of the close of every financial year, to the authority designated by the State Government amongst others, the following, namely:—

Returns.

(*a*) annual report of its activities;

(*b*) its audited statement of accounts;

(*c*) plan for surplus disposal as approved by the general body of the co-operative society;

(*d*) list of amendments to the bye-laws of the co-operative society; if any;

(*e*) declaration regarding date of holding of its general body meeting and conduct of elections when due; and

(*f*) any other information required by the Registrar in pursuance of any of the provisions of the State Act.

243ZQ. (1) The Legislature of a State may, by law, make provisions for defining the offences relating to co-operative societies and penalties for such offences.

Offences and penalties.

(2) A law made by the Legislature of a State under clause (1) shall include the commission of the following act or omission as offences, namely:—

(*a*) a co-operative society or an officer or member thereof wilfully making a false return or furnishing false information, or wilfully not furnishing any information required from him by a person authorised in this behalf;

(*b*) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of the State Act;

(*c*) any employer who, without sufficient cause, fails to pay to a co-operative society amount deducted by him from its employee within a period of fourteen days from the date on which such deduction is made;

(*d*) any officer or custodian who wilfully fails to hand over custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society of which he is an officer or custodian, to an authorised person; and

(*e*) whoever, before, during or after the election of members of the board or office bearers, adopts any corrupt practice.

Application to multi-State co-operative societies.

243ZR. The provisions of this Part shall apply to the multi-State co-operative societies subject to the modification that any reference to "Legislature of a State", "State Act" or "State Government" shall be construed as a reference to "Parliament", "Central Act" or "the Central Government" respectively.

Application to Union territories.

243ZS. The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, having no Legislative Assembly as if the references to the Legislature of a State were a reference to the administrator thereof appointed under article 239 and, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall not apply to any Union territory or part thereof as he may specify in the notification.

Continuance of existing laws.

243ZT. Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (One Hundred and Sixth Amendment) Act, 2006, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.'.

STATEMENT OF OBJECTS AND REASONS

The co-operative sector, in spite of its voluminous growth and its contribution to various sectors of national economy, have left much to be desired from the point of view of safeguarding the interests of the members and fulfilment of objects for which these institutions were organised. Elections are often postponed indefinitely and nominated office bearers or administrators take over, thereby reducing the accountability of the management of co-operative societies to their members. Unprofessional management has led to poor services and low productivity. Therefore, there is a need to initiate fundamental reforms to revitalise these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.

2. The "co-operative societies" is a subject enumerated in Entry 32 of the State List of the Seventh Schedule of the Constitution and the State Legislatures have accordingly enacted legislations on co-operative societies. Within the framework of State Acts, growth of co-operatives on large-scale was envisaged as part of the efforts for securing social and economic justice and equitable distribution of the fruits of development. It has, however, been experienced that in spite of considerable expansion of co-operatives, their performance in qualitative terms has not been up to the desired level. Viewing the need for reforms in the Co-operative Societies Acts of the States, consultations with the State Governments have been held at several fora and in the conferences of State Co-operative Ministers. One view that has emerged is for amending the Constitution so as to keep the co-operatives free from unnecessary outside interferences and also to ensure their autonomous organisational set up and their democratic functioning.

3. The Central Government is committed to ensure that the co-operative societies in the country are functioning in a democratic, professional, autonomous and economically sound manner. With a view to bring the necessary reforms, it is proposed to incorporate a new Part in the Constitution so as to provide for certain provisions covering the vital aspects of working of co-operative societies like democratic, autonomous and professional functioning. The proposed new Part in the Constitution, *inter alia,* seeks to empower the Parliament in respect of multi-State co-operative societies and the State Legislatures in case of other co-operative societies to make appropriate law laying down the following matters, namely:—

(*a*) provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;

(*b*) specifying the maximum number of directors of a co-operative society to be not exceeding twenty-one members;

(*c*) providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;

(*d*) providing for a maximum time limit of six months during which a board of directors of a co-operative society could be kept under suspension;

(*e*) providing for independent professional audit;

(*f*) providing for right of information access to the members of the co-operative societies;

(*g*) empowering the State Governments to obtain periodic reports of activities and accounts of co-operative societies;

(*h*) providing for offences relating to co-operative societies and penalties in respect of such offences.

4. It is expected that these provisions will not only ensure the autonomous and democratic functioning of co-operatives, but also ensure the accountability of management to the members and other stakeholders and also to provide for deterrence for violation of the provisions of the law.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
15*th May*, 2006

SHARAD PAWAR.

BILL NO. 49 OF 2006

A Bill to provide for the establishment of a National Jute Board for the development of the cultivation, manufacture and marketing of jute and jute products and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the National Jute Board Act, 2006. Short title, extent and commencement.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appointed day" means such date as the Central Government may, by notification in the Official Gazette, appoint for the purpose of section 3;

(*b*) "Board" means the National Jute Board constituted under section 3;

(*c*) "Chairperson" means the Chairperson of the Board;

(*d*) "Council" means the Jute Manufactures Development Council established under section 3 of the Jute Manufactures Development Council Act,1983; 27 of 1983.

(*e*) "jute manufacture" shall have the same meaning as assigned to it in the Jute Manufactures Cess Act, 1983; 28 of 1983.

(*f*) "member" means a member of the Board and includes the Chairperson;

(*g*) "prescribed" means prescribed by rules made under this Act;

(*h*) "regulations" means regulations made by the Board under this Act;

(*i*) "Society" means the National Centre for Jute Diversification, a society set up by the Central Government in the Ministry of Textiles and registered under the Societies Registration Act, 1860; 21 of 1860.

(*j*) "year" means the year commencing on the 1st day of April and ending on the 31st day of March next following.

CHAPTER II

THE NATIONAL JUTE BOARD

Constitution and incorporation of Board

3. (*1*) With effect from the appointed day, the Central Government shall, by notification in the Official Gazette, constitute, for the purposes of this Act, a Board to be called the National Jute Board.

(*2*) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(*3*) The head office of the Board shall be at Kolkata in the State of West Bengal or such other places as the Central Government may, by notification in the Official Gazette, specify and the Board may, with the previous approval of the Central Government, establish offices or agencies at other places in or outside India.

(*4*) The Board shall consist of the following members, namely:—

(*a*) the Secretary in charge of the ministry of the Central Government dealing with textiles, who shall be the *ex officio* Chairperson of the Board;

(*b*) the Additional Secretary and Financial Adviser, Ministry of Textiles, Government of India, *ex officio*;

(*c*) the Joint Secretary (Jute) in the Ministry of Textiles, Government of India, *ex officio*;

(*d*) two members of the rank of Joint Secretary to be nominated by the Central Government to represent respectively the ministries of the Central Government dealing with—

(*i*) agriculture, and

(*ii*) food and public distribution;

(*e*) three members to be nominated by the Central Government by rotation in the alphabetical order to represent respectively the Governments of the States of Andhra Pradesh, Assam, Bihar, Meghalaya, Orissa, Tripura and West Bengal; the nomination shall be from officials of the State Government holding the rank of Secretary to the State Government and dealing with Jute or Textile matters;

(*f*) two members to be appointed by the Central Government to represent the jute industry in the organized sector;

(*g*) two members to be appointed by the Central Government to represent the jute industry in the decentralized sector;

(*h*) two members to be appointed by the Central Government to represent the exporters of jute products;

(*i*) the Director, Indian Jute Industries Research Association, *ex officio*;

(*j*) the Principal, Institute of Jute Technology, *ex officio*;

(*k*) the Director, National Institute of Research on Jute and Allied Fibre Technology, Kolkata, *ex officio*;

(*l*) the Director, Central Research Institute for Jute and Allied Fibres, *ex officio*;

(*m*) the Chairman and Managing Director, Jute Corporation of India, *ex officio*;

(*n*) the Jute Commissioner, *ex officio*;

(*o*) the Secretary, National Jute Board, who shall be the *ex officio* Member-Secretary of the Board.

(*5*) The term of office of the members, other than the *ex officio* members, and the manner of filling vacancies among, and the procedure to be followed in the discharge of their functions by, such members shall be as may be prescribed.

(*6*) The office of members of the Board shall not disqualify its holder for being chosen as, or for being a member of either House of Parliament.

(*7*) The Chairperson shall, in addition to presiding over the meetings of the Board, exercise and discharge such powers and duties of the Board as may be assigned to him by the Board and such other powers and duties as may be prescribed.

(*8*) The Board shall elect from among its members a Vice-Chairperson who shall exercise such of the powers and perform such of the functions of the Chairperson as may be prescribed or as may be delegated to him by the Chairperson.

(*9*) The Board shall meet at such times and places and shall observe such procedure in regard to the transaction of business at its meetings (including the quorum at meetings) as may be determined by regulations.

Secretary and other officers.

4. (*1*) The Central Government may appoint the Secretary and such other officers and employees as it considers necessary, for the efficient discharge of the functions of the Board under this Act.

(*2*) The terms and conditions of service of the Secretary and other officers and employees of the Board shall be such as may be determined by regulations.

CHAPTER III

FUNCTIONS OF THE BOARD

Functions of Board.

5. (*1*) It shall be the duty of the Board to promote the development of jute and jute products by such measures as it thinks fit.

(*2*) Without prejudice to the generality of the foregoing provision, the Board may undertake measures to—

(*i*) evolve an integrated approach to jute cultivation in the matters of formulation of schemes, extension work, implementation and evaluation of schemes aimed at increasing the yield of jute and improving the quality thereon;

(*ii*) promote production of better quality raw jute;

(*iii*) enhance productivity of raw jute;

(*iv*) promote or undertake arrangements for better marketing and stabilisation of the prices of raw jute;

(*v*) promote standardisation of raw jute and jute products;

(*vi*) suggest norms of efficiency for jute industry with a view to eliminating waste, obtaining optimum production, improving quality and reducing costs;

(*vii*) propagate information useful to the growers of raw jute and manufacturers of jute products;

(*viii*) promote and undertake measures for quality control of raw jute and jute products;

(*ix*) assist and encourage studies and research for improvement of processing, quality, techniques of grading and packaging of raw jute;

(*x*) promote or undertake surveys or studies aimed at collection and formulation of statistics regarding raw jute and jute products;

(*xi*) promote standardisation of jute manufactures;

(*xii*) promote the development of production of jute manufactures by increasing the efficiency and productivity of the jute industry;

(*xiii*) sponsor, assist, coordinate, encourage or undertake scientific, technological, economic and marketing research pertaining to the jute sector;

(*xiv*) maintain and improve existing markets and to develop new markets within the country and outside for jute manufactures and to devise marketing strategies in consonance with the demand for such manufactures in the domestic and international markets;

(*xv*) sponsor, assist, coordinate or encourage scientific, technological and economic research in the matters related to materials, equipment, methods of production, product development including discovery and development of new materials, equipment and methods and improvements in those already in use in the jute industry;

(*xvi*) provide and create necessary infrastructural facilities and conditions conducive to the development of diversified jute products by way of assisting the entrepreneurs, artisans, craftsman, designers, manufacturers, exporters, non-Governmental agencies in the following manner, namely:—

(*a*) transfer of technology from research and development institutions and other organisations in India and abroad;

(*b*) providing support services to the entrepreneurs for the implementation of their projects including technical guidance and training;

(*c*) organizing entrepreneurial development programmes;

(*d*) planning and executing market promotion strategies including exhibitions, demonstrations, media campaigns in India and abroad;

(*e*) providing financial assistance by way of subsidy or seed capital;

(*f*) providing a forum to the people engaged or interested in diversified jute products for interacting with various national and international agencies, engaged in the jute and jute textile sector;

(*xvii*) organize workshops, conferences, lectures, seminars, refresher courses and set up study groups and conduct training programmes for the purpose of promotion and development of jute and jute products;

(*xviii*) secure better working conditions and provisions and improvement of amenities and incentives for workers engaged in the jute industry;

(*xix*) register jute growers and manufacturers on optional basis;

(*xx*) collect statistics with regard to jute and jute products for compilation and publication;

(*xxi*) subscribe to the share capital of or enter into any arrangement (whether by way of partnership, joint venture or any other manner) with any other body corporate for the purpose of promoting the jute sector or for promotion and marketing of jute and jute products in India and abroad.

(*3*) It shall be the duty of the Board—

(*a*) to advise the Central Government on all matters relating to the development of raw jute and the jute industry, including import and export of jute and jute products;

(*b*) to prepare and furnish reports relating to the jute sector as may be required by the Central Government from time to time.

CHAPTER IV

PROPERTY AND CONTRACT

The Council and Society to vest in Board.

6. (*1*) On and from the appointed day, there shall be transferred to, and vest in, the Board constituted under section 3, the Council and the Society.

(*2*) The Council and the Society which is transferred to, and which vests in, the Board under sub-section (*1*) shall be deemed to include all assets, rights, powers, authorities and privileges and all property movable and immovable, real or personal, corporeal or incorporeal, present or contingent, of whatever nature and wheresoever situate, including lands, buildings, machinery, equipments, cash balances, capital, reserves, reserve funds, investments, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership or possession or power of the Council, or as the case may be, the Society, whether within or outside India, all books of account and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the Society, or as the case may be, the Council.

General effect of vesting of Council and Society in Board.

7. (*1*) All contracts, agreements and working arrangements subsisting immediately before the appointed day and affecting the Council, or as the case may be, the Society shall, in so far as they relate to the Council, or as the case may be, the Society, cease to have effect or be enforceable against the Council, or as the case may be, the Society and shall be of as full force and effect against or in favour of the Board in which the Council and the Society have vested by virtue of this Act and enforceable as fully and effectively as if, instead of the Council, or as the case may be, the Society, the Board had been named therein or had been a party thereto.

(*2*) Any proceeding, suit or cause of action pending or existing immediately before the appointed day by or against the Council or the Society may, as from that day, be continued and enforced by or against the Board in which it has vested by virtue of this Act, as it might have been enforced by or against the Council or the Society if this Act had not been passed, and shall cease to be enforceable by or against the Council or, as the case may be, the Society.

Licences, etc., to be deemed to have been granted to Board.

8. With effect from the appointed day, all licences, permits, quotas and exemptions, granted to the Council or the Society in connection with the affairs and business of the Council, or as the case may be, the Society, under any law for the time being in force, shall be deemed to have been granted to the Board in which the Council and the Society have vested by virtue of this Act.

Tax exemption or benefit to continue to have effect.

9. (*1*) Where any exemption from, or any assessment with respect to, any tax has been granted or made or any benefit by way of set off or carry forward, as the case may be, of any unabsorbed depreciation or investment allowance or other allowance or loss has been extended or is available to the Council or the Society, under the Income-tax Act,

1961, such exemption, assessment or benefit shall continue to have effect in relation to the Board in which the Council and the Society have vested by virtue of this Act. 43 of 1961.

(2) Where any payment made by the Council or the Society is exempted from deduction of tax at source under any provision of the Income-tax Act, 1961, the exemption from tax will continue to be available as if the provisions of the said Act made applicable to the Council or the Society were operative in relation to the Board in which the Council and the Society have vested by virtue of this Act. 43 of 1961.

(3) The transfer and vesting of the Council or the Society in terms of section 6 shall not be construed as a transfer within the meaning of the Income-tax Act, 1961 for the purposes of capital gains. 43 of 1961.

Guarantee to be operative.

10. Any guarantee given for or in favour of the Council or the Society with respect to any loan or lease finance shall continue to be operative in relation to the Board in which the Council and the Society have vested by virtue of this Act.

Provisions in respect of officers and other employees of Council and Society.

11. (*1*) (*a*) Every officer or other employee of the Council serving in its employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the Council which has vested in the Board by virtue of this Act, becomes, as from the appointed day, an officer, or as the case may be, other employee of the Board.

(*b*) Every officer or other employee of the Society serving in its employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the Society which has vested in the Board by virtue of this Act, becomes, as from the appointed day, an officer, or as the case may be, other employee of the Board.

(*2*) Every officer or other employee of the Council or the Society who becomes an officer, or as the case may be, other employee of the Board, as referred to in sub-section (*1*), shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and rights and privileges as to leave, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as he would have held under the Council, or as the case may be, the Society, if it had not vested in the Board and shall continue to do so as an officer or other employee, as the case may be, of the Board, or until the expiry of a period of one year from the appointed day if such officer or other employee opts not to be the officer or other employee of the Board within such period:

Provided that if the Board thinks it expedient to extend the period so fixed, it may extend the same up to a maximum period of one year.

(*3*) Where an officer or other employee of the Council or the Society opts under sub-section (*2*) not to be in the employment or service of the Board in which the Council and the Society have vested, such officer or other employee shall be deemed to have resigned from the respective cadre.

(*4*) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Council or the Society to the Board shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority. 14 of 1947.

(*5*) The officers and other employees who have retired before the appointed day from the service of the Council or the Society and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the Board in which the Council and the Society have vested.

(*6*) The trusts of the Provident Fund and Group Insurance and Superannuation Scheme of the Council or the Society for the welfare of officers or employees would continue to discharge their functions in the Board as was being done hitherto in the

Council or the Society and tax exemption granted to Provident Fund or Group Insurance and Superannuation Scheme would continue to be applied to the Board.

(*7*) After the expiry of the period of one year, or the extended period, as referred to in sub-section (*2*), all the officers and other employees transferred and appointed to the Board, other than those opting not to be the officers or employees of the Board within such period, shall be governed by the rules and regulations made by the Board in respect of the service conditions of the officers and other employees of the said Board.

CHAPTER V

POWERS OF THE CENTRAL GOVERNMENT

Directions by Central Government.

12. (*1*) The Board shall, in the discharge of its functions and duties under the relevant statute be bound by such direction on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given.

(*2*) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Supersession of the Board.

13. (*1*) If at any time the Central Government is of the opinion that—

(*a*) on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(*b*) the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the Board or the administration of the Board has deteriorated; or

(*c*) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(*2*) Upon the publication of a notification—

(*a*) all the members of the Board shall, as from the date of supersession vacate their offices as such;

(*b*) all the powers, functions and duties which may, by or under the provisions of the relevant Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (*3*), be exercised and discharged by such person or persons as the Central Government may direct; and

(*c*) all property owned or controlled by the Board shall, until the Board is reconstituted, vest in the Central Government.

(*3*) On the expiration of the period of supersession specified in the notification issued under sub-section (*1*), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (*a*) of sub-section (*2*), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(*4*) The Central Government shall cause a notification to be issued under sub-section (*1*) and a full report of any action taken under this section and the circumstances leading to such action will be laid before each House of Parliament at the earliest.

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

Grants and loans by the Central Government.

14. (*1*) The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Board grants and loans of such sums of money as that Government may consider necessary.

(*2*) There shall be constituted a fund to be called the Jute Board Fund and there shall be credited thereto—

(*a*) any grants and loans made to the Board by the Central Government;

(*b*) all sums received by the Board from such other sources as may be decided upon by the Central Government.

(*3*) The Fund shall be applied for meeting—

(*a*) salary, allowances and other remuneration of the members, officers and other employees of the Board;

(*b*) expenses of the Board in the discharge of its functions; and

(*c*) expenses on objects and for purposes authorised by this Act.

Budget.

15. The Board shall prepare in such form and at such time during each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board, and forward the same to the Central Government.

Annual report.

16. The Board shall prepare in such form and at such time, each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and submit a copy thereof to the Central Government.

Accounts and audit.

17. The accounts of the Board shall be maintained and audited in such manner as may, in consultation with the Comptroller and Auditor-General of India, be prescribed and the Board shall furnish to the Central Government before such date, as may be prescribed, an audited copy of its accounts, together with the auditor's report thereon.

Laying of annual and auditor's report before Parliament.

18. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

CHAPTER VII

MISCELLANEOUS

Protection of action taken in good faith.

19. No suit, prosecution or other legal proceeding shall lie against the Central Government, or the Board or any member of the Board, or any officer or other employee of the Central Government or of the Board or any other person authorised by the Central Government or the Board, for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Officers and employees of Board to be public servants.

20. All officers and employees of the Board shall, while acting or purporting to act in pursuance of the provisions of this Act or of any rule or regulation made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Power to make rules.

21. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the term of office and other conditions of service of the members of the Board under sub-section (*5*) of section 3;

(*b*) the powers and duties of the Chairperson under sub-section (*7*) of section 3;

(*c*) the powers and functions of the Vice-Chairperson under sub-section (*8*) of section 3 ;

(*d*) the form in which, and the time at which, the Board shall prepare its budget under section 15;

(*e*) the form in which, and the time at which, the Board shall prepare its annual report under section 16;

(*f*) the manner in which the accounts of the Board shall be maintained and audited, and the date before which the audited copy of the accounts may be furnished to the Central Government under section 17;

(*g*) any other matter which is to be, or may be, prescribed or in respect of which provision is to be, or may be, made by the rules.

Power to make regulations.

22. (*1*) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules generally to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) the manner in which the business of the Board shall be conducted under sub-section (*9*) of section 3; and

(*b*) the terms and conditions of service of the Secretary and other officers and employees of the Board under section 4.

Rules and regulations to be laid before Parliament.

23. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties.

24. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(*2*) Every order made under sub-section (*1*) shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendment of Act 28 of 1983.

25. In the Jute Manufactures Cess Act, 1983,—

(*a*) in section 3,—

(*i*) in sub-section (*1*), for the words and figures "the Jute Manufactures Development Council Act, 1983", the words and figures "the National Jute Board Act, 2006" shall be substituted;

(*ii*) in sub-section (*2*), the words "and Salt" shall be omitted;

(*iii*) in sub-section (*4*), the words "and Salt" shall be omitted;

(*b*) in section 4, for the words, brackets and figures "the Jute Manufactures Development Council, from time to time, from out of such proceeds (after

deducting the cost of collection which shall not exceed four per cent. of such proceeds) such sums of money as it may think fit for being utilised for the purposes of the Jute Manufactures Development Council Act, 1983", the words, brackets and figures "the National Jute Board from time to time, from out of such proceeds (after deducting the cost of collection which shall not exceed four per cent. of such proceeds) such sums of money as it may think fit for being utilised for the purposes of the National Jute Board Act, 2006" shall be substituted.

Repeal and savings.

26. (*1*) On and from the appointed day, the Jute Manufactures Development Council Act, 1983 shall stand repealed. 27 of 1983.

(*2*) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The jute sector occupies an important place in the economy of the country in general, and the eastern region in particular. Around 0.14 million people are engaged in the tertiary sector and allied activities, supporting the jute economy. These apart, the jute industry also contributes to exports to the tune of nearly Rs. 1,000 crores. The Jute Manufactures Development Council (JMDC), incorporated under the Jute Manufactures Development Council Act, 1983 and the National Centre for Jute Diversification (NCJD), a Society set up by the Central Government in the Ministry of Textiles and registered under the Societies Registration Act, 1860 are the institutions which are presently co-ordinating the operations of the large number of functions in the jute sector.

2. In pursuance to the National Jute Policy, 2005, the Government has approved the creation of a National Jute Board. Creation of the Board is a major organisational initiative and it will be the agency to co-ordinate and implement the programmes of the jute sector. The proposed Jute Board will be constituted and incorporated by merging the existing Jute Manufactures Development Council (JMDC), and the National Centre for Jute Diversification (NCJD) along with their funds and manpower. To avoid the multiplicity of efforts and programmes of various organisations in the jute sector, the National Jute Board will act as an umbrella body for the entire jute sector.

3. The salient features of the proposed legislation are as follows:—

(*i*) it proposes to merge Jute Manufactures Development Council and the National Centre for Jute Diversification, and in place of these two entities constitution and incorporation of a Board to be called the National Jute Board;

(*ii*) the proposed Board shall be consisting of 20 members to be appointed by the Central Government from the jute sector, representing the jute industry, labour institutions and organisations functioning in the jute sector, and from the Ministry of Textiles, Ministry of Agriculture and Ministry of Food and Public Distribution. The Secretary, Ministry of Textiles will be the *ex officio* Chairperson of the Board;

(*iii*) the Central Government is being empowered to appoint the Secretary to the Board and such other officers and employees, as it considers necessary for the efficient discharge of its functions and the terms and conditions of service of the Secretary and other officers and employees of the Board shall be such as may be determined by regulations;

(*iv*) the functions of the Board *inter alia* to promote the development of jute and jute products; to promote production of better quality raw jute; to enhance productivity of raw jute; to promote and undertake arrangements for better marketing and standardization of the prices of raw jute; to assist and encourage studies and research for improvement of processing, quality, techniques of grading and packaging of raw jute; to provide and create necessary infrastructural facilities and conditions conducive to the development of diversified jute products; to provide financial assistance by way of subsidy or seed capital, etc. Clause 5 of the proposed Bill specifies the detailed functions of the Board;

(*v*) it has been also proposed that the property and contract including the agreement, working arrangements, licences, permits, quotas and exemptions, etc., relating to or owned by the Jute Manufactures Development Council and the National Centre for Jute Diversification shall be transferred and vest in the Board; the proposed Board shall also be entitled the tax exemptions or benefits available to the Council or the Society under the Income-tax Act, 1961;

(*vi*) the services of the officers and employees of the Council and the Society shall be transferred to the Board and they shall hold office on the same terms and

conditions as they would have held in the two institutions as if they have not to merged and also the officers and employees who opt not to be in the employment or service of the Board in which the Council and the Society have merged, such officers and employees shall be deemed to have resigned from the respective cadre;

(*vii*) the proposed legislation also empowers the Central Government to supersede the Board on account of grave emergency or on account of persistent default by the Board in not carrying out the instructions of the Government, or in public interest;

(*viii*) the Board will be a body corporate and the Government, after due appropriation made by Parliament will make such grants and loans to the Board as considered necessary and a fund called Jute Board Fund will be constituted. All proceeds on account of grant and loans from the Government; all fees and levies and all sums received by the Board from other sources will be credited to this Fund;

(*ix*) it is also proposed that the Board shall prepare annual report and submit a copy of the same to the Central Government, which shall be laid, before the Parliament;

(*x*) it is also proposed to effect consequential amendments to sections 3 and 4 of the Jute Manufactures Cess Act, 1983 to facilitate the allocation of the cess collected under this Act to the proposed Jute Board;

(*xi*) it also provides the repeal of the Jute Manufactures Development Council Act, 1983.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 9th May, 2006

SHANKERSINH VAGHELA.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 7/1/2005-Jute, dated the 17th May, 2006 from Shri Shankersinh Vaghela, Minister of Textiles to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed National Jute Board Bill, 2006, recommends under clause (1) of article 117 and clause (1) of article 274 of the Constitution the introduction of the Bill and under article 117(3), the consideration of the Bill by Lok Sabha.

Notes on clauses

Clause 1.—This clause gives the short title, extent and commencement of the Bill.

Clause 2.—This clause contains definitions of certain words and expressions used in the Bill.

Clause 3.—This clause provides for the constitution and incorporation of the Board to be called as the National Jute Board by the Central Government. This clause also lays down the composition of the National Jute Board which consists of Chairperson, *ex officio* members, and other members to be nominated by the Central Government. The Secretary in charge of the Ministry of Textiles shall be the Chairperson and two other officers of the Ministry of Textiles shall be the *ex officio* members. The nominated members include representatives from farmers, jute industry and specialists or experts in the field of jute sector and representatives of Ministries of Agriculture and Food and Public Distribution. It also provides for the terms and conditions of appointment of members to be laid down by rules. It also makes provisions for removal of the members other than the *ex officio* members.

Clause 4.—This clause empowers the Central Government to appoint the Secretary, officers and other employees for the efficient functioning of the Board.

Clause 5.—This clause lays down the functions of the Board shall, *inter alia*, include to evolve an integrated approach to jute cultivation; to promote production of better quality of raw jute; to enhance productivity of raw jute; to promote or undertake arrangements for better marketing and stabilization of the price of raw jute; to promote standardization of raw jute and jute products; to suggest norms of efficiency for raw jute and manufacture of jute products; to propagate information useful to the growers of raw jute and manufacturers of jute products; to promote and undertake measures for quality control of raw jute and jute products; to assist and encourage studies and research for improvement of processing, quality, technique of grading and packaging of raw jute; to promote and undertake surveys or studies aimed at collection and formultion of statistics regarding raw jute and jute products; to promote standardization of jute manufacturers to promote the development of production of jute manufacturers by increasing the efficiency and productivity of jute industry; to sponsor, assist, etc., pertaining to the jute sector; to maintain and improve existing markets and develop new markets within and outside the country for jute manufacturers; to sponsor, assist, etc., in the matters related to materials, equipments, etc., in those already used in the jute industry; to provide and create necessary infrastructural facilities, etc.; to organize workshops, conferences, lectures, etc., for the purpose of production and promotion of jute products; to secure better working conditions for workers engaged in the jute industry.

Clause 6.—This clause vests in the Board all assets, rights, powers, authorities and privileges and all property movable and immovable, real or personal, corporeal or incorporeal, present or contingent, of whatever nature and wheresoever situate, including lands, buildings, machinery, equipments, cash balances, capital, reserves, reserve funds, investments, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership or possession of the Jute Manufactures Development Council or the National Centre for Jute Diversification whether within or outside India, all books of account and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the Society or the Council.

Clause 7.—This clause provides for giving general effect of vesting of Jute Manufactures Development Council and the National Centre for Jute Diversification in the National Jute Board all contracts, agreements and working arrangements subsisting immediately before the appointed day, affecting the Council or the Society and shall cease to have effect or be enforceable against the Council or the Society and shall be of as full force and effect against or in favour of the Board in which the Council and the Society have vested by virtue of this Bill. This clause also provides that all licenses, etc., to be deemed to have been granted to the Board.

Clause 8.—This clause provides that all licences, permits, quotas and exemptions granted to the Council or the Society under any law shall be deemed to have been granted to the Board.

Clause 9.— This clause provides for exemption or benefit granted under the Income-tax Act, 1961 to the Council or the Society shall continue to be applicable to the National Jute Board.

Clause 10.—This clause provides that any guarantee given for or in favour of the Council or the Society with respect to loan or lease finance shall continue to be operative in relation to the Board.

Clause 11.—This clause provides protection of tenure, remuneration, terms and conditions of service, with the same obligations and with the same rights and privileges as to leave; insurance, superannuation scheme, provident fund, other funds; retirement, pension, gratuity and other benefits as he would have held under the Council or the Society. This clause also provides that officers or employees who do not opt under sub-clause (2) not to be in the employment of the Board, shall be deemed to have resigned from the respective cadre. This clause further provides that notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law, the transfer of the services of any officer or other employee of the Council or the Society to the Board shall not entitle such officer or other employee to any compensation under this Act or any other law and no such claim shall be entertained by any court, tribunal or other authority. The trusts of the Provident Fund and Group Insurance and Superannuation Scheme of the Council or the Society for the welfare of the officers and employees shall continue to discharge their functions in the Board and tax exemption granted would continue to be applied to the Board.

Clause 12.—This clause stipulates that the Board shall discharge its functions and duties under the relevant statute and be bound by directions of the Central Government. This clause also stipulates that the decision of the Central Government whether a question is one of policy or not shall be final.

Clause 13.—This clause stipulates that the Central Government may supersede the Board not exceeding six months, on account of grave emergency, when the Board has defaulted in complying with any direction issued by the Central Government or in the discharge of the functions and duties imposed on the Board by the proposed legislation, the financial position or the administration of the Board has deteriorated. This clause further stipulates that on supersession all Members of the Board shall vacate their offices, all powers, functions and duties shall be exercised and discharged by such person as the Central Government may direct. The Central Government on the expiration of the period of supersession may reconstitute the Board by fresh appointment of any person. This clause also stipulates that a full report of any action and circumstances leading to such action, taken under this clause shall be laid before each House of Parliament.

Clause 14.—This clause provides for grants and loans to the Board by the Central Government after due appropriation made by Parliament. This clause also provides for constitution of the Jute Board Fund and there shall be credited grants and loans made to the Board by the Central Government and all sums received by the Board from other sources as may be decided by the Central Government. The Fund shall be applied for meeting salary, allowances and other remuneration of the Members, officers and other employees of the Board in the discharge of its functions.

Clause 15.—This clause provides for the Board to prepare its budget during each financial year, showing the estimated receipts and expenditure of the Board and submit the same to the Central Government.

Clause 16.—This clause provides that the Board shall prepare each financial year its annual report giving full account of activities during the financial year and submit the copy to the Central Government.

3GI/08G1

Clause 17.—This clause provides that the accounts for the Board shall be maintained and audited in consultation with the Comptroller and Auditor-General of India and the Board shall furnish an audited copy of its accounts together with the auditor's report to the Central Government.

Clause 18.—This clause provides that the Central Government shall lay annual report and auditor's report of the Board before each House of Parliament.

Clause 19.—This clause seeks to provide immunity to the Central Government or the Board or any member of the Board, or any officer or other employee of the Central Government or of the Board or any other person authorised by the Central Government or the Board from suits, prosecution and other legal proceedings in respect of anything done in good faith under the proposed legislation.

Clause 20.—This clause provides that all officers and employees of the Board shall be deemed to be public servants.

Clause 21.—This clause empowers the Central Government to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. These matters, *inter alia,* include the terms and conditions of service of the members of the Board under proposed sub-section (5) of section 3; powers and duties of the Chairperson, Vice-Chairperson and the manner in which the accounts of the Board shall be maintained and audited and the date by which the audited copy shall be furnished to the Central Government.

Clause 22.—This clause empowers the Board to make, with the previous approval of the Central Government, regulations not inconsistent with the provisions of the proposed legislation and the rules made thereunder. These include the terms and conditions of service of the Secretary and other officers and employees and the manner in which the business of the Board shall be conducted.

Clause 23.—This clause provides that every rule and regulation made under the proposed legislation shall be laid before each House of Parliament.

Clause 24.—This clause empowers the Central Government to make order to remove any difficulty which may arise in giving effect to the provisions of the proposed legislation by order published in the Official Gazette. Such order shall not be inconsistent with the provisions of the proposed legislation. This power can be exercised only within two years from the commencement of the proposed legislation. Further, every such order made shall be laid before each House of Parliament.

Clause 25.—This clause provides for certain consequential amendments to the Jute Manufactures Cess Act, 1983.

Clause 26.—This clause deals with repeal and savings. On the commencement of the proposed legislation, the Jute Manufactures Development Council Act, 1983 shall stand repealed subject to savings with regard to anything done or any action taken or purported to have been done or taken under the Act so repealed.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution and incorporation of the National Jute Board for carrying out the functions envisaged in the proposed Bill. Clause 4 of the Bill provides that the Central Government may appoint the Secretary and such other officers and employees as it considers necessary for the efficient discharge of the functions of the Board. The existing infrastructure, staff and the other facilities available in the National Centre for Jute Diversification and Jute Manufactures Development Council would be utilised by the said Jute Board. The National Centre for Jute Diversification and Jute Manufactures Development Council would be merged into the said Board along with their funds and manpower. No fresh capital expenditure is envisaged for the time being to establish the Board. The Jute Manufactures Cess Act, 1983 which yields approximately Rs. 38.00 crores would be utilised for recurring expenditure. The grants and loans support shall be provided through regular budget after due appropriation made by Parliament.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill empowers the Central Government to supersede the Board if, on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of the Bill or the Board has persistently made default in complying with any direction issued by the Central Government or in the discharge of the functions and duties imposed on it and as a result of such default, the financial position of the Board or the administration of the Board has deteriorated, for such period as may be specified in the Notification.

2. Clause 21 of the Bill empowers the Central Government to make rules relating to (a) the term of office and other conditions of service of the members of the Board under sub-section (5) of section 3; (b) the powers and duties of the Chairperson under sub-section (7) of section 3; (c) the powers and functions of the Vice-Chairperson under sub-section (8) of section 3; (d) the form in which, and the time at which, the Board shall prepare its budget under section 15; (e) the form in which, and the time at which, the Board shall prepare its annual report under section, 16; (f) the manner in which the accounts of the Board shall be maintained and audited, and the date before which the audited copy of the accounts may be furnished to the Central Government under section 17; and (g) any other matter which is to be, or may be, prescribed or in respect of which provision is to be, or may be, made by rules.

3. Clause 22 of the Bill empowers the Board with the previous approval of the Central Government, by notification in the Official Gazette, to make regulations with regard the manner in which the business of the Board shall be conducted under sub-section (9) of section 3; and the terms and conditions of service of the Secretary and other officers and employees of the Board under section 4.

4. All rules and regulations made under the proposed legislation shall be required to be laid before each House of Parliament.

5. All matters in respect of which rules and regulations may be made are matters of procedure and administrative detail, and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 47 OF 2006

A Bill further to amend the Immoral Traffic (Prevention) Act, 1956 *and the Prevention of Money-Laundering Act,* 2002.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Immoral Traffic (Prevention) Amendment Act, 2006. Short title and commencement.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENT TO THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Amendment of section 2.

2. In section 2 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the principal Act),— 104 of 1956.

(*i*) in clause (*aa*), for the words "sixteen years", the words "eighteen years" shall be substituted;

(*ii*) clauses (*ca*) and (*cb*) shall be omitted;

(*iii*) in clause (*f*), after the words "for commercial purposes", the words "or for consideration in money or in any other kind" shall be inserted.

Amendment of section 3.

3. In section 3 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than two years and which may extend to three years and also with fine which may extend to ten thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to fine which may extend to two lakh rupees.".

Amendment of section 4.

4. In section 4 of the principal Act, in sub-section (*1*), the words "or a minor," shall be omitted.

Amendment of section 5.

5. In section 5 of the principal Act, in sub-section (*1*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that if the person in respect of whom an offence committed under this sub-section, is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life.".

Insertion of new sections 5A, 5B and 5C.

6. After section 5 of the principal Act, the following sections shall be inserted, namely:—

Trafficking in persons.

"5A. Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of,—

(*a*) threat or use of force or coercion, abduction, fraud, deception; or

(*b*) abuse of power or a position of vulnerability; or

(*c*) giving or receiving of payments or benefits to achieve the consent of such person having control over another person,

commits the offence of trafficking in persons.

Explanation.—Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured or received the person with the intent that the person shall be used for the purpose of prostitution.

Punishment for trafficking in persons.

5B. (*1*) Any person who commits trafficking in persons shall be punishable on first conviction with rigorous imprisonment for a term which shall not be less than seven years and in the event of a second or subsequent conviction with imprisonment for life.

(*2*) Any person who attempts to commit, or abets trafficking in persons shall also be deemed to have committed such trafficking in persons and shall be punishable with the punishment hereinbefore described.

Punishment for visiting a brothel.

5C. Any person who visits or is found in a brothel for the purpose of sexual exploitation of any victim of trafficking in persons shall on first conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to fifty thousand rupees.".

7. In section 6 of the principal Act,— Amendment of section 6.

(*i*) in sub-section (*1*), in clause (*b*), after the words "liable to fine", the words "which may extend to one lakh rupees" shall be inserted;

(*ii*) in sub-section (*2A*), the words "or minor" occurring at both the places shall be omitted.

8. In section 7 of the principal Act, in sub-section (*1A*) and in the proviso to sub-section (*2*), the words "or minor" shall be omitted. Amendment of section 7.

9. Section 8 of the principal Act shall be omitted. Omission of section 8.

10. In section 10A of the principal Act, in sub-section (*1*),— Amendment of section 10A.

(*i*) in clause (*a*), the words and figure "or section 8" shall be omitted;

(*ii*) in clause (*b*), for the words "five years", the words "seven years" shall be substituted.

11. In section 13 of the principal Act,— Amendment of section 13.

(*i*) in sub-section (*2*), for the words "an Inspector", the words "a sub-inspector" shall be substituted;

(*ii*) in sub-section (*3*), in clause (*b*), for the word "may", the word "shall" shall be substituted.

12. After section 13 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 13A and 13B.

"13A. (*1*) The Central Government may constitute an Authority for the purposes of effectively preventing and combating the offence of trafficking in persons. Constitution of Central Authority.

(*2*) The members of the Authority shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed.

(*3*) The Chairperson of the Authority shall be one of the members appointed under sub-section (*2*) to be nominated by the Central Government.

(*4*) The term of office of the members of the Authority, the manner of filling vacancies among and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed.

13B. (*1*) The State Government may constitute an Authority for the purposes of effectively preventing and combating the offence of trafficking in persons. Constitution of State Authority.

(*2*) The members of the Authority shall be appointed by the State Government and shall be of such number and chosen in such manner as may be prescribed.

(*3*) The Chairperson of the Authority shall be one of the members appointed under sub-section (*2*) to be nominated by the State Government.

(*4*) The term of office of the members of the Authority, the manner of filling vacancies among and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed.".

13. In section 17 of the principal Act, in sub-section (*3*), in the first proviso, the words "or minor" occurring at both the places shall be omitted. Amendment of section 17.

14. In section 18 of the principal Act, in sub-section (*1*), in clause (*b*), the words "or minor" shall be omitted. Amendment of section 18.

15. Section 20 of the principal Act shall be omitted. Omission of section 20.

Amendment of section 22.

16. Section 22 of the principal Act shall be re-numbered as sub-section (*1*) thereof and,—

(*i*) in sub-section (*1*) as so re-numbered, for the words and figures "section 5, section 6, section 7 or section 8", the words, figures and letters "section 5, section 5B, section 5C, section 6 or section 7" shall be substituted;

(*ii*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the trial of the proceedings under this Act shall be conducted *in camera*.". 2 of 1974.

Amendment of section 23.

17. In section 23 of the principal Act, in sub-section (*2*),—

(*a*) in clause (*g*), in sub-clause (*xii*), the words and figure "or section 8" shall be omitted;

(*b*) after clause (*g*), the following clauses shall be inserted, namely:—

"(*ga*) number of the members of the Authority and the manner in which such members shall be chosen for appointment under sub-section (*2*) of section 13B;

(*gb*) the term of office of the members of the Authority and the manner of filling vacancies among, and the procedure to be followed in the discharge of their functions by, the members under sub-section (*4*) of section 13B;".

Insertion of new section 23A.

18. After section 23 of the principal Act, the following section shall be inserted, namely:—

Power to make rules.

"23A. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for,—

(*a*) the number of the members of the Authority and the manner in which such members shall be chosen for appointment under sub-section (*2*) of section 13A;

(*b*) the term of office of the members of the Authority, the manner of filling vacancies among, and the procedure to be followed in the discharge of their functions by the members under sub-section (*4*) of section 13A.

(*3*) Every rule made by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

Amendment of the Schedule.

19. In the Schedule to the principal Act, the figures and words "20 District Magistrate, Sub-Divisional Magistrate or any Executive Magistrate specially empowered by the State Government." shall be omitted.

CHAPTER III

AMENDMENT TO THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

20. In the Prevention of Money-Laundering Act, 2002, in the Schedule,— Amendment of Schedule to Act 15 of 2003.

(*i*) in PART A, after PARAGRAPH 2, the following PARAGRAPH shall be inserted, namely:—

"PARAGRAPH 3

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section	Description of offence
5A	Trafficking in persons.";

104 of 1956. (*ii*) in PART B, in PARAGRAPH 4 relating to OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956, section 8 and the entry relating thereto shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as Act) was initially enacted as "the Suppression of Immoral Traffic in Women and Girls Act, 1956" in pursuance of the International Convention for the Suppression of the Traffic in Persons and of the exploitation of the prostitution of others signed at New York on 9th May, 1950. It was amended firstly in 1978 to make good some inadequacies in the implementation of the Act, and secondly in the year 1986 comprehensively, with a view to widen the scope of the Act to cover all persons, whether male or female, who are exploited sexually for commercial purposes. Despite the above amendments, the said Act could not achieve its purpose. Representations have been received from State Governments and voluntary organisations working with the victims of the trafficking, at several national and international fora, that the implementation of the Act is hampered by the existence of certain provisions of the Act, such as sections 8 and 20, which are the most commonly invoked provisions for any enforcement being done under the Act. These provisions are directed towards prosecution of the trafficked persons and result in further victimising the victim. It is represented that instead of prosecuting the trafficker under sections 3, 4, 5 and 6 of the Act, most prosecutions take place under section 8 of the Act. Thus, with a view to focus on traffickers and to provide for stringent punishment it is proposed to amend the Act.

The salient features of the proposed Bill are as follows:

(i) amendment of the definition of "child" provided in section 2(aa) so as to raise the age of child from sixteen years to eighteen years;

(ii) omission of the words, "minor" and "major" wherever they occur in the Act;

(iii) amendment of section 3 so as to enhance the punishment for a person who keeps or manages or acts or assists in keeping or management of a brothel;

(iv) insertion of new section 5A to define the offence of "Trafficking in Persons" on the lines of International Protocol to Prevent, Suppress and Punish Trafficking in Persons. Section 5B is being proposed to be inserted to provide punishment for the offence under section 5A and section 5C is also being inserted to provide for punishment for visiting a brothel by any person;

(v) amendment of section 6 with a view to enhance the punishment provided for the offence of detaining a person in the premises where prostitution is carried on;

(vi) omission of section 8 which at present provide for punishment for seducing or soliciting for the purpose of prostitution;

(vii) amendment of section 10A so as to enhance the term of detention in a corrective institution from 5 years to 7 years;

(viii) amendment of section 13(2) so as to give the powers of Special Police Officer under the Act to the Sub-Inspector of Police in the place of Inspector of Police;

(ix) insertion of a new section 13A so as to empower the Central Government to constitute an Authority for the purpose of effectively preventing and combating the offence of trafficking in persons. The appointment of the Chairperson and members of the said Central Authority shall be made by the Central Government in accordance with such rules as may be prescribed;

(x) insertion of a new section 13B so as to empower the State Government to constitute a State Authority for the purpose of effectively preventing and combating the offence of trafficking in persons. The appointment of the Chairperson and members of the said Authority shall be made by the respective State Governments in accordance with such rules as may be prescribed;

(xi) omission of section 20 which relates to the removal of a prostitute from any place;

(xii) amendment of section 22 so as to make provision for *in camera* proceedings to protect the privacy and dignity of the victims;

(xiii) amendment of the Schedule to the Prevention of Money-Laundering Act, 2002 with a view to make applicable the provisions of the Prevention of Money-Laundering Act, 2002 regarding confiscation of property to the persons involved in the offence of trafficking in persons. From the Schedule of the Prevention of Money Laundering Act, 2002 the entry relating to section 8 of the Immoral Traffic (Prevention) Act is being omitted which is of consequential nature.

2. The Bill seeks to achieve the above said objects.

NEW DELHI;
The 11th May, 2006

RENUKA CHOWDHURY.

FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert new sections 13A and 13B in the Act. Sub-section (1) of the proposed section 13A provides for the constitution of a Central Authority for the purpose of effectively preventing and combating the offence of trafficking in persons. The Authority shall consist of Chairperson and members to be appointed by the Central Government. The term of office of the members of the Authority and the manner of filling of vacancies and the procedure to be followed in the discharge of their functions by, the members shall be such as may be prescribed.

It is estimated that the Bill, when enacted, will involve expenditure on salary per year of Rs. 2.69 crore and on other infrastructure expenditure of Rs. 0.80 crore per year.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert two new sections 13A and 13B in the Act. Sub-section (1) of the proposed section 13A empowers the Central Government to constitute an Authority for the purposes of effectively preventing trafficking in persons. Sub-sections (2) and (4) of the said section empower the Central Government to make rules to provide for the number of members of the Authority, the manner in which such member shall be chosen, term of office of members, the manner of filling vacancies among and the procedure to be followed in discharge of their functions by the members.

2. Sub-section (1) of section 13B of the Bill provides for constitution of a State Authority for the purpose of effectively preventing and combating the offence of trafficking in persons. Sub-sections (2) and (4) of the said section empower the State Government to make rules to provide for the number of members of the Authority, the manner in which such member shall be chosen, term of office of members, the manner of filling vacancies among and the procedure to be followed in discharge of their functions by the members.

3. Clause 18 of the Bill provides that the rules made under the proposed legislation are required to be laid before each House of Parliament. The rules made by the State Government shall be laid before the State Legislature.

4. The matters in respect of which rules may be made are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

———

P. D. T. ACHARY,
Secretary-General.

PRINTED BY THE MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI
AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI—2006

MGIPMRND—886GI—7-6-2006.